SENATE—*Wednesday, December 9, 1987*

(Legislative day of Tuesday, December 8, 1987)

The Senate met at 12 noon, on the expiration of the recess, and was called to order by the Honorable RICHARD C. SHELBY, a Senator from the State of Alabama.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Glory to God in the highest and on earth peace, good will toward men.—Luke 2:14.

Eternal God of infinite love, while the whole world is thinking about peace, give it ears to hear the glorious message delivered first to shepherds "abiding in their fields by night." Somehow may its reality penetrate our Nation with more than euphoric and sentimental interest. May its promise enfold and pervade the summit conference. Give us ears to hear its simple conditions—"glory to God in the highest—on earth peace, good will toward men." Patient Father, at a time when American business is reaping enormous profit because of the birth we celebrate, may the One who gives peace not be ignored—may He be given His rightful place in our lives. Forgive the pessimism, cynicism, and unbelief which forecloses on hopes and aspirations. At this critical time, help us to comprehend this gracious promise of peace as the gift of love from the Eternal Father of us all. Deliver us from facades and charades at a time when we desperately need reality and truth. In His name whose birthday we celebrate. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 9, 1987.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable RICHARD SHELBY, a Senator from the State of Alabama, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

Mr. SHELBY thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order the acting majority leader is recognized.

RESERVATION OF LEADERSHIP TIME

Mr. PROXMIRE. Mr. President, first I ask unanimous consent that the time of the majority leader and of the Republican leader both be reserved for their use later at their discretion today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will now be a period, under the previous order, for the transaction of morning business for not to exceed 1 hour with Senators permitted to speak therein for not to exceed 5 minutes each.

The acting majority leader.

NITZE RESPONSE TO GAFFNEY ON INF VERIFICATION

Mr. PROXMIRE. Mr. President, it is doubtful that any Senator could make a better informed attack on the verifications provisions of the INF Treaty than Frank Gaffney. Mr. Gaffney until a short time ago was a top official in the Defense Department. He was Secretary Weinberger's prime expert on arms control. When Mr. Weinberger left the Defense Department and Frank Carlucci replaced him, Mr. Gaffney also left the Defense Department. Since then he has become the leading critic of the INF Treaty on the Public Broadcasting System and elsewhere. On November 30, the Washington Post carried an article on the INF Treaty by Mr. Gaffney. Gaffney raised four questions about the treaty. On December 7, Paul Nitze who has been a principal negotiator on the treaty for many months responded to Mr. Gaffney in an article in the Washington Post. Nitze answered each of the questions raised by Gaffney.

Mr. President, I hope that Senators will take the time to consider the answers by Mr. Nitze. They go to the heart of what is the great strength of this treaty. They explain why this INF Treaty is primarily significant exactly because it does provide the most remarkable verification requirements of any treaty we have negotiated. Nitze's shows that the INF Treaty provides the quintessential verification basis for future arms control agreements with the Soviet Union. Few Senators appreciate the remarkable lengths the American negotiators have gone to assure that we can determine militarily significant violations of this arms control agreement by the Soviet Union.

Gaffney's first question was: "Does the treaty actually eliminate the Soviet Union's INF missile infrastructure and capacity?" Nitze says the agreement does exactly that. First, it calls for the elimination of all Soviet INF and missile launchers in the presence of U.S. inspectors. That isn't all. Supporting equipment and structures—such as trucks, garages, must also be eliminated or modified so they cannot support INF in the future.

Second, Gaffney asks: "Are the Soviets supplied data complete, consistent and compatible with our own intelligence estimates of treaty limited systems and activities?" Nitze says the answer is yes. Again, there is more. The treaty gives the United States the right to conduct baseline inspections of all Soviet deployment and support facilities.

Third, Gaffney asks: "Does the treaty language have ambiguities or loopholes?" Nitze replies that unfortunately it does. But find a significant treaty that does not. This is why for past treaties we have established the Standing Consultative Commission. The SCC exists for the precise purpose of clearing up necessary ambiguities. The INF Treaty provides for the same kind of future consultation and resolution. There is no realistic way to negotiate a treaty covering limitation on nuclear weapons that will not require constant inquiry to resolve charges on both sides of violations. This is a problem arms control will always have to live with.

Fourth, Gaffney asks: "Is there an effective onsite inspection regime for suspect facilities?" Nitze answers. There is one. It is not perfect. But it is effective. The treaty does not provide for unannounced onsite inspection. One reason it does not is because the administration understandably considered it unwise to give the Soviets access without notice to our most secure facilities. But the treaty does provide short notice onsite inspection. It provides continuous monitoring of

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

the exits of the facility used to assemble SS-20's. And what is specially important, the INF agreement provides special measures to enhance United States ability to monitor with reconnaissance satellites the SS-25 bases where, according to Nitze, the Soviets could most easily engage in illegal activity.

Nitze points out that the Soviets could hide INF missiles somewhere. But they cannot make these missiles militarily effective without a very high probability of detection under the treaty. They cannot test the missiles. They cannot train troops in how to operate them. They cannot maintain the garages and trucks to support them. None of these activities could take place without every likelihood that NATO intelligence would know about it.

Nitze also points out that the Soviets agreed to United States proposals that were carefully studied in detail by United States experts. The Soviets accepted United States proposed close-out inspections. The Soviets accepted United States proposed quota for short notice onsite inspections. The Soviets agreed to United States proposed monitoring of the Soviets former SS-20 final assembly facilities.

Mr. President, I ask unanimous consent that the article by Frank Gaffney that appeared in the Washington Post on November 30 raising questions about the INF Treaty, and the response by Paul Nitze carried in the Post on December 7 be printed in that order in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Nov. 30, 1987]

TAKE A "TIMEOUT" ON THE INF TREATY

(By Frank Gaffney)

Dear Mr. President:

In your recent moving statement accepting Caspar Weinberger's resignation, you praised your secretary of defense for his service to the country in many ways. One of the most striking to me was the recognition you extended to him for his handling of several controversies for which he has been roundly criticized by others.

I am speaking of the highly publicized revelations during Secretary Weinberger's tenure of several instances of cost overruns and other failures of the Defense Department's procurement system. Despite the fact that for most of the past seven years, Cap has been caricatured with a $500 toilet seat around his neck, you rightly credited him with finding and fixing these problems. In thus commending Secretary Weinberger for his unwillingness to tolerate inadequate performance and unsatisfactory products where they were found, you have set an example that we all should emulate.

In this spirit, I write to express my concern that your administration and the nation may shortly become embroiled in a new controversy over inadequate workmanship and insufficient quality control. This one doesn't involve coffeepots or "gold-plated" hammers; rather, it involves an agreement with our adversary to eliminate all intermediate-range nuclear missiles from Europe. The analogy, however, may be useful in illuminating the causes of my concern.

Like so many of the procurement horror stories, the basic approach was entirely acceptable. Your administration has for six years sought an INF agreement based on a second structure—the so-called "zero option." As a direct result of our patience, tenacity and alliance cohesion, an accord based on this principle is at hand.

If there is a problem with the INF treaty, it will in all likelihood be a result of the same phenomena that occasionally mar defense procurements: unexpected complexity, unanticipated scheduling pressures and corners that had to be cut to get the job completed within the time and resources available. The responsibility for such a problem would not, of course, lie with some contractor or procurement official; indeed, it may not lie with any single individual. Yet the consequences can be every bit as unpleasant and contrary to the national interest—or more so.

My guess is that, if there are resultant problems with the treaty, they will lie in the area of verification. This may seem incredible in view of its unprecedented provisions for intrusive on-site inspection and continuous monitoring of selected U.S. and Soviet facilities. On the face of it, such measures seem to go so far beyond what has been negotiated in support of past arms control agreements that many will conclude that the treaty is, by definition, verifiable.

Unfortunately, the INF treaty can have a range of novel verification measures undreamed of by the framers of the flawed SALT II accord and still not enable us to ensure Soviet compliance. It is for precisely this reason that your administration early on enunciated as a matter of policy a requirement for "effective verification" of any future agreement.

While this term can mean many things, for us it has always had certain cardinal features in the INF context: elimination of the entire infrastructure for supporting INF missiles; comprehensive exchanges of detailed, internally consistent data about the forces being controlled; clear, unambiguous treaty text; and short-notice on-site inspection not only at present and formerly declared facilities associated with treaty-limited items, but also at suspect sites.

This sound verification agenda was made necessary by bitter past experience with Soviet cheating on arms control agreements. If we have failed to keep in mind past lessons in the rush to finish an accord on INF in time for the summit, the risks to the national interest will vastly exceed the damage done by high-priced coffeepots and toilet seats. The prescription for addressing the problem should be the same, however; spare no effort to uncover and assess the errors and accept whatever inconvenience might be caused in fixing them.

In this vein, Mr. President, I urge you to do what Cap Weinberger would have done in a comparable procurement situation, namely call a "time-out," take stock of the situation with the best experts you can find and, if necessary, make adjustments to correct any deficiencies revealed in the process. A week remains before you will be asked to sign the INF Treaty; I strongly recommend that you use that week to review the treaty with key individuals, particularly members of the Senate and others outside the government who are likely to be influential in the upcoming ratification debate. After you and they have had a chance to read the fine print, several questions must be addressed:

Does the treaty actually eliminate the Soviet Union's INF missile infrastructure and capacity?

Is the Soviet-supplied data complete, consistent and compatible with our own intelligence estimates of treaty-limited systems and activities?

Does the treaty language have important ambiguities or loopholes or provisions that otherwise might lend themselves to future debates about meaning and interpretation?

Is there an effective on-site inspection regime for suspect facilities?

If the answer to one or more of these questions is no, by finding it out now—before you sign the treaty—it is possible to seek adjustments with the Soviet Union and avoid these issues becoming a matter of Senate debate and amendment.

Naturally, many will say such an idea is out of the question. They will maintain that this is the best agreement we can get with the Soviet Union, that it cannot be improved. In this regard, I remember how often Cap Weinberger was told that a nonperforming contractor was doing the best he could or that there was no alternative to accepting an inferior product. To my knowledge, he never failed to reject that advice and to set in train the necessary, albeit sometimes inconvenient, corrective steps.

For that matter, your own experience in negotiating with the Soviet Union has decisively demonstrated that determined insistence on sound arms control terms is rewarded in due course by Soviet movement toward our position. Nowhere should this be a more likely outcome than in the area of verification, where Soviet rhetoric about openness and transparency have recently reached new heights.

So, if it comes to that, "Just say no." The United States will not accept another unverifiable arms control agreement, no matter how smartly it is packaged in verification-"break-throughs," steps which for all their novelty will not materially alter the difficult task of ensuring Soviet compliance. After all, there is a lot more riding on this than a bad report card from the General Accounting Office.

[From the Washington Post, Dec. 7, 1987]

NO NEED FOR A "TIMEOUT"

(By Paul H. Nitze)

My former colleague, Frank Gaffney, has proposed that the administration "take a 'timeout' on the INF treaty" to address four questions about the treaty's effectiveness [oped, Nov. 30]. A timeout is not needed; we have been addressing these questions all along, and the answers are good ones:

Does the treaty actually eliminate the Soviet Union's INF missile infrastructure and capacity? In a word, yes. The treaty requires the Soviets to eliminate all INF missiles and launchers in the presence of U.S. inspectors. Similarly, certain supporting equipment and structures must be eliminated or modified according to agreed procedures that will render them incapable of supporting INF systems in the future.

After the elimination process is completed, a close-out inspection will be conducted by U.S. personnel at each former Soviet INF deployment or support facility to ensure that it no longer is involved in any INF-related activity. Certain support structures, such as garages formerly used for SS-20 support vehicles and hardened shelters formerly housing U.S. GLCMs, may be re-

tained for non-INF purposes, but the sides will have the right for the next 13 years to conduct short-notice, on-site inspections to ensure that these structures and all former facilities are not performing an INF-related role.

Are the Soviet-supplied data complete, consistent and compatible with our own intelligence estimates of treaty-limited systems and activities? Again, yes. Additionally, the treaty gives us the right to conduct baseline inspections of all Soviet deployment and support facilities to verify the accuracy of these data.

Does the treaty language have important ambiguities or loopholes or provisions that otherwise might lend themselves to future debates about meaning and interpretation? The INF treaty is necessarily long and complex, and contains a great many provisions. There is no way we can today anticipate all future contingencies. That is why all arms-control treaties include provision for future consultations for the purpose of clearing up any differences that may arise. But a great deal of effort over several years of drafting has been devoted to making the text as precise and free of loopholes as we can make it.

Is there an effective on-site inspection regime for suspect facilities? Yes, not a perfect one but an effective one. A perfect regime would require anytime, anywhere, instantaneous, on-site inspection with no right of refusal by the inspected side. As Gaffney knows, the administration took a hard look at this type of regime over the past year and determined that, for the purposes of this agreement, it would be unnecessary, as well as detrimental to U.S. security interests, to give Soviet inspectors such unlimited access to our most secure facilities.

So we sought and achieved short-notice, on-site inspection of former INF deployment and support facilities, continuous monitoring of the exits of the facility that was used to assemble SS-20s and special measures to enhance our ability to monitor with reconnaissance satellites the SS-25 bases where illegal activity could most easily be conducted. If we suspect that illegal activity is going on elsewhere, we can challenge the Soviets in the Special Verification Commission created by the treaty and demand proof that our suspicions are unfounded.

Does this mean that we are guaranteed that the Soviets cannot hide an INF missile somewhere on their territory? No. But they cannot test such missiles, train troops in their operation or maintain the basing infrastructure necessary to support them, all of which we would detect with high probability. Without these, the Soviets could not maintain a militarily significant capability. That is the definition of effective verification.

A final point. Gaffney charges that the administration is endangering its efforts due to the time pressures created by an arbitrary deadline. In fact, the verification regime I have just described results from carefully considered U.S. proposals that were fully studied within the U.S. government and negotiated with the Soviets over the past several months. The significant movement made on verification during the past few weeks consisted of Soviet acceptance of our proposal for close-out inspections, Soviet acceptance of our quota for short-notice, on-site inspections and Soviet agreement to our proposed method of monitoring their former SS-20 final-assembly facility.

The ACTING PRESIDENT pro tempore. The Senator from South Dakota.

THE INF TREATY SHOULD BE AMENDED

Mr. PRESSLER. Mr. President, I know that Washington is in a state of euphoria over the INF Treaty. Everything else has been forgotten about, includng the budgetary crisis we are in, the Wall Street collapse, and, indeed, it is a most historic event. But there is in our future the duties of the U.S. Senate regarding this treaty. We have a constitutional role to play. There is an implication in this town that the treaty should be ratified almost without question; that amendments would be viewed as killer amendments. Today, I shall describe several INF Treaty amendments I am developing. I believe the Senate has a responsibility to consider amendments to this treaty.

Indeed, the Senate can do several things with treaties: It can attach amendments, reservations, declarations, understandings, or provisos. The most serious of these would be amendments which result in the administration having to negotiate a protocol to the treaty with the other side.

So amendments are not killer amendments. An amendment might be an improvement to this treaty. Indeed, the Panama Canal Treaty had all five types of conditions attached, and the Panama Canal Treaty was adopted on that basis.

So, this is nothing new. It is our responsibility.

I know that the euphoria in the news media and the euphoria across the country about this may be proper protocal, when any head of state visits the United States. Equally proper is the role of the U.S. Senate in offering amendments and reservations to this treaty. It is in the tradition of this body. Not only is it in the tradition, but it is our responsibility.

As a member of the Senate Foreign Relations Committee, I shall participate in the hearings on this treaty which will start on January 19, and by April we should be finished in the Foreign Relations Committee. I shall try to amend the treaty in the Foreign Relations Committee. If I fail there, I will join with others in amending it here on the Senate floor.

Let me describe to you briefly four areas where I think we need to consider either amendments, declarations, or reservations in, but particularly amendments.

First of all, linkage of the treaty's implementation to conventional force imbalances in NATO which would be exacerbated by the elimination of our INF deterrent forces. I shall describe that more later. To put it in blunt language, we are giving up our trump card in Europe and leaving the Russians with a large conventional forces superiority there. It may be that some will say our taxpayers should pay to increase our conventional forces in Europe, but I do not think that would sell very well, particularly in view of the fact that there is great sentiment in our country to lessen our troop commitment in Germany to meet some of the budgetary crises that we have at home.

In any event, I strongly believe that before we give up our trump card, so to speak, that would stop the Russian advancing tank divisions or the 400,000 troops they have in East Germany, before we give up that trump card we should have some linkage in this treaty regarding the conventional force imbalances.

Second, linkage to Soviet human rights practices, including the Soviet mistreatment of Jews and others who seek the emigrate to other countries. Certainly if not an amendment, some declaration about this in that treaty.

Third, stronger treaty language regarding the prohibition of camouflage, concealment and deception of missiles and missile facilities.

Fourth, a requirement that all INF warheads be destroyed in addition to INF missiles and launchers.

Mr. President, this is an outline of some of the amendments and reservations I am still developing for the treaty debate and there will be more. I know some of my colleagues are developing some. I do not think that we should settle just for provisos or declarations attached to the treaty which do not have to go back to the Russians. I think we should have some amendments to the treaty, some amendments that will show the Senate is meeting its full responsibility in treaty making. It is true that amendments would require going back to the Russians with a protocol. But I believe that is part of our responsibility. In the legislative branch of the Government, under our Constitution, it is provided that after the President signs a treaty there is a ratification process and that process includes consideration of amendments. There is no reason that cannot be done.

Mr. President, I would also point out that General Bernard Rogers, our last NATO commander, has said the INF treaty would remove the single most important deterrent weapon from the NATO arsenal. In this respect, the INF Treaty might be considered unequal and unfair to the U.S. and its allies. Much has been made of the argument that the Soviets are giving up almost 5 times as many missiles as we are under this treaty.

This statement is misleading in at least two ways. First, it leaves the Soviets in possession of thousands of INF warheads that are not slated for destruction under the treaty.

Second, the Soviets are in a much better position than we are to compensate for the loss of missiles.

Thus, one amendment I may offer during the Foreign Relations Committee work on the treaty would require the President to certify to the Congress, before the treaty goes into effect if it is ratified, that the loss of the Pershing II missile will not reduce NATO's deterrent capability. I think that would be a hard thing to certify.

Another amendment I mentioned I am working on would require another certification from the President that the Soviets are in full compliance with the ABM Treaty and all other treaties concerning arms control.

The precise language of these amendments will be developed in the next few weeks prior to debate in the Foreign Relations Committee. I mentioned four other areas where I will be developing amendments.

Mr. President, in addition, we are working on amendments with others which will include verification, including a provision for unlimited "challenge" inspections of suspected treaty violations, which I shall discuss further in a moment; linkage to other Soviet actions that threaten international security and stability; and refinement of some of the treaty's terminology.

This treaty violates two of the most important objectives of arms control—stability and lower defense costs. First, it would be destabilizing, as General Rogers has pointed out, in weakening the NATO conventional deterrent. Second, the diminished NATO deterrent capability will lead to greater defense expenditures—which our allies are unwilling to pay for and which we cannot afford in an era of deficit reduction. The question is, Can the Senate improve the treaty through conditions on the ratification approval resolution?

Our knowledge of existing Soviet intermediate range nuclear missiles is inadequate. Therefore, it may be impossible to verify the number and characteristics of such powerful weapons as the SS-20 missile. We cannot realistically evaluate the reduction or elimination of that which we do not know. Thus, I am concerned that Senate approval of the ratification of the INF Treaty could lead to Soviet cheating. Before outlining the amendment, let me say a few words about the verification drawbacks of the treaty.

We do not now possess hard data on the SS-20 missile—on its capabilities, production quantities, deployment and mission. The number of European targets that would warrant being attacked by Soviet nuclear missiles is relatively small—perhaps in the range of 50 to 200 targets. Yet, we estimate that the Soviets possess 441 launchers for these triple-warhead missiles. Furthermore, most of these major targets already are covered by other Soviet missiles, such as the SS-11 and SS-19, which have been tested and deployed in both intermediate and intercontinental range missions. Many targets in Western Europe also could be reached by nuclear-capable aircraft and tactical missiles.

My preliminary examination of the treaty, which was provided to Senate offices only yesterday, contains no identification of the numbers of SS-20 missiles and launchers to be destroyed. In fact, United States intelligence estimates suggest that the Soviets may possess as many as five missiles for each mobile launcher. The Soviets have not admitted to possessing that many SS-20 missiles, and we are forced to rely on estimates, or guesstimates. The same uncertainties exist with respect to other Soviet INF systems. For example, we were unable to detect the existence of SS-23 missile launchers until 5 years after they were deployed. It is entirely possible, then, that we have not detected a large number of SS-20 launchers. Instead of the approximately 2,000 missiles the Soviets admit having which would be subject to the INF treaty's dismantling requirements, there probably are many more. It is ironic that the Soviets have admitted deploying 50 SS-23 transporter-elector-launchers [TEL's]—30 more than United States intelligence had been able to detect. That suggests how adept the Soviets are at concealing their INF missiles and launchers. I might also point out that SS-20 TEL's are compatible with SS-25 ICBM's and some may have been, or now are being, diverted to the SS-25 forces, instead of being destroyed as the INF treaty would require.

The 2,000 missiles the Soviets have acknowledged possessing must be compared to the 436 United States missiles that would have to be eliminated under the treaty. This astoundingly favorable ratio for the United States is simply too great to be believed without careful scrutiny. Never before have the Soviets agreed to such unequal terms favoring the United States. We must question whether they have developed a plan to cheat in order to turn this apparent disadvantage into an advantage for themselves. Why have the Soviets this year accepted the so-called zero-zero arms control position the United States first offered in 1981—an option they have vigorously resisted until now? Could it be that, in the intervening years, they have laid the groundwork for massive deception?

Consistent with the findings of the President's General Advisory Committee on Arms Control and Disarmament [GAC], that the Soviets are guilty of violating three arms control treaties prohibiting deliberate concealment, it is our knowledge that all of the Soviet systems to be eliminated under the INF Treaty are heavily camouflaged and concealed. If the Soviet-provided data on these missiles and their launchers is unreliable, and they have gone to great efforts to deprive the prying eyes of American satellites of the ability to independently develop more reliable measurements, then are we forced to rely on their data? That would be a serious error on our part. Many of their missiles and launchers are mobile; ours are not mobile and are located at known fixed sites in Western Europe.

Much praise has been heaped upon the verification provisions of the INF treaty. Indeed, in many respects they are remarkable, given the fact that the Soviets always have opposed onsite verification methods. Yet they could be inadequate to deal with the kind of deliberate, effective concealment violations the Soviets have committed in the past. The U.S. intelligence community never actually has seen an SS-20 missile. Just the other day, we were told that the Soviets gave our negotiators a picture of it. It was of such poor quality that on the very eve of Mikhail Gorbachev's departure for Washington, DC., our negotiators were demanding a better picture of the SS-20. I assume we must have received it in view of the fact that Mr. Gorbachev now is in our Capital City and the treaty has been signed. All Americans should be distressed by this kind of Soviet attitude. They should be even more concerned about the possibility that this treaty may get us into a vast quagmire of deception, the likes of which the world has never seen.

Mr. President, I might ad a footnote to that. I know thay they let a television station take a picture of the SS-20, driving along a day or two ago. I was somewhat amused by that because they had refused to give the details of them up until the very eve of Gorbachev's departure.

I have been a proponent of onsite inspection in arms control agreements, and I continue to support intrusive verification methods to complement our satellite intelligence capabilities. Let me mention one potential problem, however, with the INF Treaty's limited onsite inspection provisions. In article XI, paragraph 6, inspection standards for missile production facilities are prescribed. It says that the portals of the Votkinsk Machine Building Plant in the Soviet Union may be inspected. Now, I am not sure what is meant by the term "portals." It is not defined in the treaty. I do not want to see a situation develop in which all the doors to our Magna, UT, plants are flung open to Soviet inspectors, but some entrances or exits, including subterranean entrances or exits, to the Soviets' Votkinsk plant are claimed by the Soviets not to be

portals within the meaning of the treaty.

More important is a problem I alluded to earlier. That is the question of the missing missiles and the disappeared launchers. All of the missiles covered by this treaty, as well as the SS-25 and perhaps other Soviet missiles not covered by the treaty, use basically the same launcher. If INF missiles have been stashed away in some well-concealed location, then there is a real problem ahead of us. If camouflaged launchers are located in the same places, we will have double trouble. Moving camouflaged launchers to still other hidden stockpiled SS-20's would ensure a long-range strategic disaster for the West if armed conflict occurs between NATO and the Warsaw Pact.

Before I am accused of fantasizing preposterous scenarios, let me point out that press reports of classified U.S. intelligence estimates support the concern I have just expressed. Those reports assert that we have very limited capability to deal with the problem of mobile missiles. Those reports also indicate that the kind of onsite inspections provided for in this treaty will provide only modest improvements in our ability to locate, identify, or count missiles. More disturbing is the assessment that we have only about a 20-percent probability of detecting deployed or on-the-road SS-20's, even with onsite inspection and the newest technology surveillance satellites. Let me stress that there is no similar problem with the fixed-site missiles to be eliminated by the United States in Europe.

Mr. President, there is much more that can and will be said about the verification problems of this treaty. There will be much time to discuss them further both here on the Senate floor and in the Foreign Relations Committee. Let me conclude by saying that the dimensions of this problem are so serious and profound that I expect to offer an amendment or reservation regarding it. That amendment will say, in effect, we must have an unlimited "challenge" inspection right. That is, the right to go anywhere at any time in the Soviet Union, without impediment, to inspect any treaty violations that we suspect. This is a wholly intrusive amendment. It violates every traditional Soviet concept of secrecy and deception. I imagine that it also will be totally opposed by many experts in this country—people guarding our own secrets who do not want Soviets traipsing around all of our sensitive installations. Yet it is a revolutionary, imaginative concept that bears extensive debate in the Senate. It may need refinement—most legislative proposals and ideas concerning treaties do. But this is the framework of one of the amendments, reservations, declarations, understandings, or provisos that I will be developing now that the INF Treaty is in our hands. There will be others.

In conclusion, Mr. President, I think it is very possible this body will ratify this treaty, but I sincerely hope the Senate adopts amendments to this treaty which will send it back to the negotiating table. Under our Constitution, we have the responsibility to consider amendments. There are many precedents for it—in fishing treaties that have come through here in recent years, the Panama Canal Treaty, and so forth.

There is an atmosphere in this town which seems to suggest that it is improper to suggest amendments to the treaty. I think we should be very careful in what we are doing here. Also, I have been concerned, Mr. President, and I say this as a strong supporter of President Reagan, about the White House staff in the last year very much wanting to talk about arms control agreements and not the budgetary deficit, not agriculture, not product liability and tort reform, not the Clean Air Act, which is before the Congress—to almost abandon the domestic agenda and spend its time on arms control agreements, which also are very important. I know that the White House wants to show accomplishment after the Irangate episode and with some of the current staff changes; indeed, if the accomplishments are valid, fine. But I think we in the Senate have a particularly heavy duty to take a closer look than normal at this INF Treaty, because I feel the White House staff is moving things along faster than they normally would and may be slipping some provisions into the treaty that are concessions to the Russians.

Also, I feel that President Reagan is dealing with a new commodity with Mikhail Gorbachev. It is a friendly, smiling commodity, but it also could be a very dangerous one. I just spent Thanksgiving weekend in Nicaragua where the Soviets are spending a billion dollars a year. They have an agenda in Afghanistan regarding the freedom fighters. They also have agenda throughout the world. If you are going to get into the Politburo, you have to believe very strongly in the Communist desire to dominate the world, and Mikhail Gorbachev has that or he would not be where he is in their system.

Mr. President, it is my theme that we in the Senate have a responsibility not just to approve this treaty but to hold very careful hearings, which we will do, but also to very carefully consider any amendments. And I do not want to hear these amendments called killer amendments because they are not. It is the legitimate constitutional role of the Senate in treatymaking. That is the way our Constitution is set up.

SENATOR CLAIBORNE PELL: A LEADER ON HUMAN RIGHTS

Mr. PRESSLER. Mr. President, recently I had the opportunity to travel to Nicaragua with Senator CLAIBORNE PELL, the distinguished chairman of the Senate Committee on Foreign Relations. This was a rare opportunity for me to better understand the depth of his concern for human rights throughout the world.

At Senator PELL's insistence, we were permitted to inspect the infamous El Chipote Prison in Managua. Had I gone alone to Nicaragua, I probably would not have sought the opportunity to visit this notorious place.

I believe it was the distinguished Senator's unusually great concern for human rights that led him to work so hard to visit El Chipote Prison, and I congratulate him for that effort. Throughout our years together in this Chamber, and especially since he became chairman of the Foreign Relations Committee, he has impressed me as a courageous spokesman for human rights. He is one of the great leaders of the Senate in that regard and with respect to many other aspects of our Nation's foreign policymaking efforts.

Several years ago, again with Senator PELL's leadership, I recall visiting another scene that sparked human rights concerns during a visit to Argentina. He was quite forceful in expressing United States concerns regarding the thousands of Argentine citizens who disappeared or were imprisoned because of their political beliefs. He and his capable staff knew how to open doors to a place previously off limits to outside observers—both then and more recently in Nicaragua.

Mr. President, I ask unanimous consent that a December 8, 1987, New York Times article by Stephen Kinzer on our visit to El Chipote Prison be printed at this point in the RECORD.

[From the New York Times, Dec. 8, 1987]

TWO UNITED STATES SENATORS TOUR NICARAGUAN SECURITY JAIL

(By Stephen Kinzer)

MANAGUA, NICARAGUA, Dec. 7.—The first outsiders allowed to visit Managua's security prison, including two United States Senators, said today that the prison is empty and undergoing renovations.

They said the Government's decision to renovate the jail and invite foreigners to view it was part of its effort to show a new political profile in support of the Central American peace accord signed last August.

The security prison, known as El Chipote, has been used as a political detention center for decades. Some officials of the Sandinista Government were held there in the days when they were underground conspirators against the regime of Anastasio Somoza Debayle.

The Sandinistas have maintained that they transformed El Chipote into a humane short-term detention center, but former inmates, some of whom said they were held there for months, have described abuses they said were committed inside.

Interior Minister Tomás Borge, who controls El Chipote and is himself a former inmate, for years refused requests from human rights groups and other outsiders, as well as Nicaraguan investigators, to be allowed to tour El Chipote.

The first and, so far, only visits by outsiders to El Chipote took place on Nov. 26 and 28. They were the result of Mr. Borge's unexpectedly positive response to a request from Senator Claiborne Pell, Democrat of Rhode Island, who was then visiting here with Senator Larry Pressler, Republican of South Dakota.

HUMAN RIGHTS GROUPS INVITED

In addition to the Senators and their aides, Mr. Borge invited officials of Amnesty International, Americas Watch and the International Commission of the Red Cross to inspect the jail.

"The place was described to us as an interrogation center, not a jail," Senator Pell said in a telephone interview from Washington today. "It was starker and bleaker than a similar facility would have been in our own country, but it could have been worse."

"I think we were allowed in because the Government there is trying to do all it can to influence public opinion," the Senator said.

The visitors said El Chipote appeared to have been built to house about 150 prisoners. They said much of the jail was dark, but that windows were now being cut into the ceilings of every cell.

No representative of Nicaragua's non-governmental Permanent Commission for Human Rights was invited on the tour of El Chipote, and the head of the commission, Lino Hernández, said today he was uncertain that what the visitors had seen was a good indication of what the prison had been like.

"Past experience tells us that when foreigners come on missions like this, things are arranged for them in advance," Mr. Hernández said.

Juan Mendez, director of the Washington office of Americas Watch, a human-rights group, said he saw six or seven especially small cells in the subterranean jail, each of which he said was slightly larger than a telephone booth. He said he was told these cells were not used for extended periods.

"These sporadic visits are nice, but what is really needed is permission for the Red Cross to make regular visits there," Mr. Mendez said. He said that Deputy Interior Minister Luis Carrión Cruz had told him the Red Cross's request to make such visits is still under consideration.

SIGNIFICANT REFORMS IN SOUTH AFRICA

Mr. PRESSLER. Mr. President, as I noted last week when I placed an article on the effects of United States sanctions against South Africa in the RECORD, I intend to seek the indulgence of the Senate in these last days of the 1st session and the early days of the 2d session of the 100th Congress to point out other aspects of our error in imposing those sanctions last year. This is the second in this series.

On November 16, the Minister of Foreign Affairs of South Africa, the Honorable R.F. "Pik" Botha, spoke before the Eighth International Symposium on Policy and Strategy in Munich, Germany. His topic was "Southern Africa: Time for Reappraisal," and I believe it is useful to all of us who likely will be faced with the question of further sanctions against his country to examine this speech in detail.

Foreign Minister Botha maintains that, in his opinion, "The imposition of sanctions against South Africa was * * * an historical error based on a number of misconceptions and ignorance of the realities on southern Africa." I find myself in complete agreement with that statement, Mr. President. Mr. Botha notes correctly that the most "important misconception" has been that the South African Government "could be coerced into acceptance of demands from abroad in respect of a wide range of subjects * * *." He points out that no attempt was made to "address the consequences of sanctions for black South Africans, for * * * neighboring states, for employment and for the advancement of * * * black people." Further, he correctly states that the "whole debate in the United States and Europe was conducted on an emotional plane without any reference to the true conditions in South Africa."

Some of the statements made in this speech do not reflect my own opinion, particularly those that apply to our foreign policy in other parts of the world. But I believe, Mr. President, from my own knowledge of South Africa, that he is entirely correct when he says "sanctions assist the radical left and the radical right" in South Africa because the radical left see sanctions as supporting their policy of violence and the radical right claim no amount of reform will ever placate South Africa's detractors. Witness the fact that the ANC has refused to disavow violence and come to the negotiating table—and the fact that the Conservative Party is now the official opposition in the House of Assembly after elections earlier this year.

Another point Mr. Botha makes so well is that South Africa has received little if any credit for the many reforms it has instituted within the past decade—and I intend to speak further on this point in the future. He lists those many reforms and I would call particular attention to them as set forth in his speech.

A final point, Mr. President, is that the Foreign Minister does not simply say that South Africa and its neighboring states are interdependent; he cites details of the intertwined commerce, economy, and developmental aspects of life in southern Africa.

In conclusion, let me quote this very important paragraph on the fact that sanctions retard rather than facilitate the reform process in South Africa:

The elements committed to violence see the pressure, rightly or wrongly, as being directed against the Government of South Africa and as support for their cause. Why should they engage in negotiations with the South African Government in these circumstances, they ask. The international community is on their side and the longer they hold out, the more pressure on the Government will increase and the stronger will their position become. The sanctions campaign, real or threatened, is thus having a counterproductive effect. The psychological impact is as potentially damaging, if not more damaging in the short term, than the economic impact and * * * governments abroad should be made aware of the implications of their actions. There is in any event no question of sanctions producing a political system in this country which is not the product of genuine negotiations between South Africans.

Mr. President, I commend this speech to our colleagues and ask unanimous consent that it be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

SOUTHERN AFRICA: TIME FOR REAPPRAISAL

The theme of discussion at this seminar is extremely relevant. The time has indeed come for Western nations, and the Soviet bloc, to reconsider their attitude to South Africa and its role in the Southern African context.

Sanctions have been applied, and endured, and the heavens did not fall on South Africa.

Major progress has been made both in the area of socio-economic and political reform within South Africa which is simply not recognized abroad.

And, there has been an alarming deterioration in the political, socio-economic and security conditions in all the so-called Frontline States in the region which remain economically interdependent on South Africa.

The imposition of sanctions against South Africa was in my opinion, an historical error based on a number of misconceptions and ignorance of the realities on Southern Africa.

The most important misconception was that the South African government could be coerced into acceptance of demands from abroad in respect of a wide range of subjects ranging from what the outside world perceived to be the ideal political solution for South Africa, the dismantling of apartheid, and racial discrimination, to the release of so-called political prisoners. To achieve these demands sanctions were imposed but those who advocated sanctions were ignorant of the realities of the subcontinent.

I cannot comprehend the way in which governments—particularly in the Western world—which should have access to sound intelligence, are able to project sanctions as being in the interests of any of our neighbouring states. It is surely not beyond the capacity of these governments to ascertain the true economic situation in countries like Mozambique, Zimbabwe, Swaziland, Botswana, Zambia, Lesotho, Angola and Malawi and then to appreciate just how interdependent we all are.

Each and every one of those countries are reliant on South Africa (to a greater or lesser degree) for their communications, transport infrastructure, exports and imports. Investments by South Africa in these countries run into billions which I shall address in due course.

Further, South Africa provides jobs for nearly 2 million black people from our neighbors and the Frontline States and countries further afield. Some are legally in South Africa but the majority have crossed our borders and are working in our country illegally. It goes without saying that they take jobs away from black South Africans, since many of them are willing to work for low wages and in some cases, merely in return for food.

Bear in mind, too, that many of the foreigners working here send part of their earnings back home, implying that well in excess of 2 million foreign blacks depend solely on their South African sourced income.

My government makes decisions on carefully considered factual data and closely examines the consequences of any action it might take. It puzzles me that governments which support sanctions fail seemingly to operate in the same way.

No attempt was made to address the consequences of sanctions for black South Africans, for our neighboring states, for employment and for the advancement of our black people. The whole debate in the United States and Europe was conducted on an emotional plane without any reference to the true conditions in South Africa.

What I find worrying is that if a legislature as powerful as that of the United States, whose actions have international ramifications, can legislate on the basis of emotional rather than on objective criteria, then the world faces potential hazards of frightening dimensions.

Ignoring the South African issue, against this background, how should one view the rationale behind United States action in the Middle East, the Persian Gulf, in Central America, in the Philippines and in respect of the Third World debt crisis. It is a matter of concern that a power like the U.S. is incapable of harnessing and interpreting data rudimentary to decisions impacting on millions of human lives.

Returning to South Africa, it is clear that no cognisance was taken of the fact that sanctions were going to harm the whole subcontinent, help extreme right and leftwing elements within South Africa and retard further reform because sanctions encourage the advocates of violence to scare moderate black leaders away from the conference table.

Sanctions assist the radical left and the radical right. The radical left see sanctions as support for their policy of violence. The radical right claim that no matter how much reform is introduced, the Western world will not be satisfied until this country is destroyed.

One must appreciate that major reforms in South Africa are often viewed as minor reforms by those living abroad.

It is the belief of the South African government that sanctions adopted by European countries against South Africa are vindictive and unwarranted, particularly in the light of the fundamental reforms that have been accomplished and our readiness to negotiate the widening of our democracy to include all the communities and peoples of South Africa.

Secondly, on political reform, by which one understands the right of all communities to form political parties, express political opinions and otherwise participate in the political process, and on the progress toward negotiations with representatives of all racial groups and communities in South Africa on the future system, the State President reiterated in Parliament on August 13, 1987, that the time had come for South African leaders to meet their responsibilities towards our common future and for us to discuss that future with one another. The South African government believes that the National Council Bill, first tabled in Parliament on May 23, 1987, represents a realistic and balanced step which will give a legal basis to such discussion. Since then, wide-ranging discussions have been held with a much wider spectrum of black leaders than is generally appreciated abroad and positive reaction has been received from a large number of persons and institutions within South Africa.

The South African government has decided to proceed with the Bill in amended form. It is the belief of the South African government that the Bill creates an instrument for negotiation among all South African communities on the constitutional future of our country. It provides for the first time for black South Africans to serve on a national constitutional body and to help shape policy.

Also, through the establishing of the Regional Services' Council we will now have joint responsibility at the regional level, in which black and white representatives will serve together. Effective administrative and executive authority at regional and provincial level will be shared and town-planners, for example, will be able to develop new open urban areas.

We are frequently pressurised to provide a timetable for the elimination of so-called "apartheid laws": what more could be expected of the South African government to convince outsiders that we are actively engaged in removing racial discrimination in South Africa?

It might be helpful to list some of the discriminatory measures which have been withdrawn, and some of the nonracial measures which have been introduced in recent times.

Blacks have obtained full property rights in black urban areas.

The Prohibition of Political Interference Act has been abolished.

Influx control, the pass-law system and 34 related measures have been abolished or amended.

Central business districts are being opened to all entrepreneurs.

Forced removals for purely political reasons have been suspended.

The last vestiges of job reservation in the Mines and Work Act are being abolished.

The colour bar in the Liquor Act has been scrapped.

The Prohibition of Mixed Marriages Act and Section 16 of the Immorality Act have been abolished.

Cinemas and theatres may on application open their doors to all persons.

The permit system in terms of which nonwhites had to apply to attend white universities has been abolished.

Restrictions on the movement of people of Indian origin have been removed.

White preference in the immigration laws has been cancelled.

There has been a financial commitment to equal education opportunities for all.

A new urban development strategy has been accepted.

A uniform identity document for all our citizens has been introduced.

A multiracial provincial executive system replaced the former all white provincial councils system.

Multiracial regional services councils are being established.

Black and multiracial trade unions have been legalized.

Work places have been desegregated.

Sport has been desegregated.

The development of open urban areas has in principle been accepted.

Surely this demonstrable commitment to effective reform in all areas of life in South Africa ought to convince serious political observers abroad about the South African government's commitment to move ahead with the reform programme.

The major objective in the South African government's political programme is to achieve participation by all without domination—participation in the wealth of the country and in the decisionmaking process in respect of all matters affecting the interests of all communities in such a way that the rights of minorities are not threatened. We already declared that we are, in principle, ready to negotiate a new South African constitution based on power sharing in respect of all matters of national concern.

It would be encouraging if western governments supported this objective and if they were to acknowledge the major reforms that have taken place in South Africa. I cannot understand why this cannot be done.

Standards and norms are expected of us which are expected of no other African country. It is a form of reverse racism. In the rest of Africa, coups, a government controlled press, dictatorships and nationalised business sectors go unquestioned. We certainly wish to uphold as many of the fundamental European rights and standards as possible but South Africa is simply not a European country. What makes our diversity more complex is the fact that we have to deal with a first world economy and a third world economy.

But, the relative freedoms and democracies that do exist in South Africa are criticised by those wishing to destroy them and replace them with a dictatorship which would eliminate human rights.

My government can bring about change and it is changing but we cannot succumb to demands which would inevitably destroy democracy and the norms and values to which European countries subscribed. There are those elements in our society whose interests are threatened by the government's reform programme. They remain committed to violence as a political instrument and reject negotiations. They are encouraged in their attitude by the campaign of escalating sanctions and threats of sanctions which governments abroad have employed in the belief, it would seem, that this would speed up the achievement of an objective which we share. Far from facilitating negotiations, this pressure is, in fact, retarding the process.

The elements committed to violence see the pressure, rightly or wrongly, as being directed against the Government of South Africa and as support for their cause. Why should they engage in negotiations with the South African Government in these circumstances, they ask. The international community is on their side and the longer they hold out, the more pressure on the Government will increase and the stronger will their position become. The sanctions campaign, real or threatened, is thus having a counterproductive effect. The psychological impact as as potentially damaging, if not more damaging in the short term, than the economic impact and I feel that governments abroad should be made aware of the implications of their actions. There is in any event no question of sanctions producing a

political system in this country which is not the product of genuine negotiations between South Africans.

As has been demonstrated this past week with the release of Mr. Govan Mbeki we are in principle prepared to release prisoners convicted of offences directed at the security of the State. However, although the South African Release Advisory Board will continue to make recommendations to the South African Government in terms of its norms, it may assist European Governments in coming to grips with the real objectives of the ANC to reflect on Mr. Mbeki's remarks to the effect that he remains a Communist and that he would continue to support violence.

The President of the USA has publicly said that the South African Government is under no obligation to negotiate the future of the country with any organization that proclaims a goal of creating a communist state and uses terrorist tactics to achieve it.

Mrs. Thatcher has charged the ANC with being a terrorist organization and it is a fact that the executive of the ANC is dominated by members of the South African Communist Party. Should we not insist that this of all organizations should at the very least abandon violence and commit itself to peaceful dialogue?

The ANC, with its dominant communist element, categorically rejects the concept of negotiations. They see negotiations as a betrayal of their revolutionary principles and objectives. They know that they will never get their ideology and philosophy accepted via negotiations. They see revolution, terrorism and intimidation in terms of their ideology, as the only means of achieving their political objectives.

As the official mouthpiece of the ANC, SECHABA, editorialised in its October, 1987 edition: "We are being pushed in two different directions which are in essence one direction, namely anti-communism and renouncing the armed struggle. We are not prepared to move in any one of the two".

Thirdly, a brief remark on South Africa's position in Southern Africa.

South Africa is sincere and is paying a high price, in trying to promote peace and prosperity, for all in the region. The bleak reality of Africa is that there is almost universal economic retrogression, administrative chaos and political ineffectiveness in most states. Even under conditions of peace and stability the countries of Southern Africa face an almost impossible task to get economic development off the ground. All the countries of the region will pay the price of escalating violence and conflict.

Under the circumstances the government cannot sit back and allow the ANC access and supply routes as well as base facilities in neighboring countries.

The criticism of South Africa's supposed "destabilisation" of neighboring states in recent years in effect implies that the South African government should tolerate the threat posed by terrorists in adjoining countries in building up arsenals, and organising acts of terrorism including necklace murders. We are not prepared to ignore this threat to the security of all our peoples and have taken action to counter the hostile build-up in neighbouring states.

In the case of Mozambique for example, South Africa has made every effort to engage the Frelimo government in Maputo constructively with a view to creating a more stable end economically viable region. For our pains we have had to endure repeated accusations of destabilisation.

South Africa is said to be supporting RENAMO yet the Institute of Strategic Studies has just issued its Annual Survey of the Military Balance in which it was found that "RENAMO has no significant outside source of military supplies relying for the most part on material captured during its raids".

It is difficult to justify to the South African taxpayer that our country should turn a deaf ear to a constant barrage of accusation and vilification from a nearby neighbour. We are at this time endeavouring to cope with the pitiful consequences of the socio-economic disruption to a large proportion of the Mozambican population who flood in large numbers across the South African border in search of food and the basic necessities of life.

South Africa has contributed more in financial and development aid as well as the provision of jobs to Mozambique than the most generous Western donors. Since the signing of the Nkomati Accord, for example, South Africa has been involved in projects to upgrade the harbour of Maputo; to repair locomotive and upgrade signal equipment of the Mozambican national railways; to repair and replace fishing vessels; to promote tourism; to repair equipment at electric power stations, to provide cooling facilities for fresh produce and to upgrade sugar refineries.

Despite profound political differences, the South African economy and the economy of surrounding countries are so closely interwoven that these states stand to suffer if the South African economy were to be hurt. This is not surprising when one bears in mind that South Africa accounts for three-quarters of Southern Africa's total output, provides a labour market for people from the whole region, provides the only reliable transport links with the outside world for at least severn states as far north as Zaire, and supplies its neighbours with vital foods, medicine, equipment as well as other goods and services. In addition, neighbouring countries are dependent on the Southern African transport network to carry their overseas imports and exports: Six of the nine members of the Southern African Development Coordination Conference (SADCC) Botswana, Lesotho, and Swaziland (BLS states) Malawi, Zambia and Zimbabwe are land-locked. The interdependence of these countries on South Africa is underscored by the interesting finding of Dr. Yona Seleti of the University of Zambia that the SADCC countries' dependence on the RSA has risen from 50% to 80% since the establishment of the SADCC.

During the 1985/86 financial year, the South African Transport Services (SATS) handled about 7 million tonnes of traffic to and from the seven SADCC states. Three million tonnes of goods were sold to these countries by South Africa while 1,6 million tonnes were goods sold to South Africa. The remaining 2 million tonnes represented the overseas imports and exports of these countries.

Even when peace and stability return to Angola and Mozambique, the operation of the principal regional railway lines outside South Africa will for a long time be faced with major problems due to obsolete and run-down equipment. South Africa rolling stock is today to be found as far north as Zaire and even Tanzania. In 1986, a total of 40 diesel-electric and 40 steam locomotives were on hire to neighbouring states, and whereas in 1983 a daily average of 5,883 South African freight cars were on freight lines as against 936 foreign wagons on South African lines, the present average is as well over 6,000 South African wagons and less than 1,000 foreign wagons in South Africa.

South African Airways (SAA) and its pool partners carried a total of 440,000 passengers and ferried more than 6 million kilogrammes of air freight in 1984/85 to Zambia, Zimbabwe, Malawi, Mozambique, Botswana, Lesotho, Swaziland, Comores, Reunion and Mauritius. SAA is equipped to repair aircraft engines, electronic equipment and to service aircraft and assists neighbouring states in this regard.

At present SAA have maintenance contracts with five African States.

In addition to SAA, Safari's fleet of freight planes ferries urgently needed spares, machinery, pharmaceuticals and consumer goods to destinations all over Africa.

On the trade front, approximately R2 billion or about 7.5% of South Africa's 1984 exports went to 47 African countries. What is important in this respect is that we are supplying our fellow African States with commodities and products at prices which are far cheaper than they can obtain elsewhere. This factor is of vital importance if regard is had to the serious problems encountered by African States in earning foreign currency. At least half of South Africa's African trade is with countries in the region. According to a study undertaken by the Economist Intelligence Unit, all SADCC members, except Tanzania, trade with South Africa; each has more trade with South Africa than with all its SADCC partners combined, and total SADCC trade with South Africa is seven times higher than intra-SADCC trade, with South African exports to SADCC running at about U.S. $2 billion a year.

South Africa is an important source of food to neighbouring as well as more distant African countries. Even in good years, most Southern African countries are net importers of grain crops and often rely on South Africa to supplement their own production. The availability of food in most African countries shows a downward trend, with a corresponding dependence on imports.

The BLS countries and SWA/Namibia obtain all their petroleum products from South Africa, while Zambia, Zimbabwe and possibly countries further north are heavily dependent on supplies via South Africa.

Power and water supplies across national boundaries are important to progress in the whole region particularly Lesotho, Zimbabwe and Botswana which can contribute to South Africa's limited water resources. Huge projects involving billions of rand, like the Lesotho Highlands water supply project could have a profound effect on the economies of the supplying countries.

Lesotho, Swaziland and parts of Mozambique, Zimbabwe and Botswana receive power from South Africa's Electricity Supply Commission.

The tourist industry in Botswana, Lesotho and Swaziland as well as Zimbabwe and Malawi is dominated by South African visitors.

Botswana, Lesotho and Swaziland are joined with South Africa in the Southern African Customs Union (SACU) and, with the exception of Botswana, in the Rand Monetary Area (RMA): The customs union agreement provides for the free flow of goods among member states which levy the same tariffs on goods imported from outside the Union. All major ports of entry are in South Africa, which collects the customs

duties and allocates them on a pro rata basis. Whereas the economies of Botswana, Lesotho and Swaziland are very small compared with South Africa—their joint GNP equals about 3% of that of South Africa, their share in the Southern African Customs Union's revenue pool constitutes a crucial share of their total state revenue. Actual disbursements (and share of total revenue) in 1982/83 were:

Botswana, R116 million (32 per cent);
Lesotho, R 71 million (37 per cent); and
Swaziland, R117 million (61 per cent).

The South African Reserve Bank also acts as the central bank for Lesotho and Swaziland, and pays compensation for Rand notes and coin in circulation there. The two countries hold most of their foreign reserves in the form of Rand balances invested in the South African money market. Funds are freely transferable within the Rand Monetary area but Swaziland and Lesotho have the right unilaterally to impose restrictions on the flow of funds to South Africa. The two countries also have free access to the South African capital market through which they have raised substantial loans from time to time.

South African private investors, especially mining houses, have played a substantial role in opening up the mineral wealth of Southern and Central Africa, and in re-establishing large agricultural and manufacturing ventures. Neighbouring countries benefit in many ways from the experience, know-how and resources provided by the South African private sector.

Many of the major construction projects in the region are carried out by South African firms—Cahora Bassa, railways, roads, Malawi's new capital of Lilongwe, etc. In view of their expert knowledge of local conditions and the geographical closeness of their top decision-makers, these firms are well placed to provide competitive services.

South Africa is a substantial creditor of sub-Saharan Africa. Credit is provided by both the public and private sector. By mid-1985, the South African government had provided development funds totalling R214 million to non-South African countries in Southern and Central Africa. The Southern Africa Development Bank plays an important role in this regard as well as the Credit Guarantee Insurance Corporation, based in Johannesburg, which provides both long-term and short-term guarantees. The cumulative total of long-term credit guarantees provided so far to African countries by South Africa is in excess of R400 million.

To conclude:

We have introduced substantial reforms and change in terms of the realities of South Africa;

We shall continue with our programme aimed to extending democracy in South Africa; and

We accept that white domination must end and power-sharing is the only way to govern South Africa equitably in such a way that minority rights are secured.

South Africa is the powerhouse of Southern Africa and stability and progress in our neighbouring states is distinctly in our interests. We can only gain from stability in the region contrary to the perception that we are to blame for the economic retrogression and socio political disintegration in some of the states bordering on our country.

We are puzzled that commentators in Europe and elsewhere should glibly accept propaganda regarding South African destabilization policies when we in fact stand ready to assist our neighbours to achieve greater stability, economically and otherwise.

Sanctions are an historical error when all in Southern Africa needed encouragement to resolve our problems around a conference table. It simply does not make sense for the mainstay of economic life of Southern Africa to be singled out for punishment which would so obviously have repercussions beyond our borders. We are not defying the world. The facts and realities of Southern Africa defy the world.

We realise we must change. Does the Western world realise it has to change its approach or has it become so institutionalised with secretariats and personnel earning their living, pensions, motorcars, housing, subsidies and allowances from the false perception which has been created of South Africa.

Western policies towards South Africa have often been based on false analogies and misconceptions. They have ignored the realities of South and Southern Africa and the time has come for reappraisal of the facts and realities of the region. There are many avenues for constructive Western interaction with South Africa and I would trust that there is a genuine interest in helping those of us in South Africa who are determined to bring about a broader, more equitable political dispensation in our country while at the same time contributing to peace and stability in the region.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Iowa is recognized.

REDUCTIONS IN FEDERAL HIGHWAY AID

Mr. GRASSLEY. Mr. President, in early October, I learned that the Federal Government notified Iowa and many other States of severe, completely unexpected reductions in their Federal highway aid.

We can and must settle this issue so that our States do not continue to lose Federal highway aid.

Briefly, States lost millions of dollars in highway contracting authority and thousands of jobs. The reason rests on two things:

This major loss was caused by a new provision in the highway bill and by the Federal Highway Administration's misunderstanding of the congressional intent in administering the new provision.

More specifically, the new language allows a State to return 2 years of formula interstate construction money to the FHWA which places it in the interstate construction discretionary fund. Because several States returned their interstate formula money, the amount of interstate discretionary funds soared from the original congressional set-aside of $300 million to well over $1.4 billion. This provision would not have created a problem for our States if it were not for a budget balancing mechanism called obligation authority.

Obligation authority restricts spending in the highway program. Congress sets the nationwide obligation ceiling, and FHWA then divides it among the States. The problem is Congress has specified that the discretionary accounts must be covered with full obligation authority.

As a result of FHWA interpretation of congressional intent, obligation authority to cover the huge 1.4 billion discretionary interstate construction pot is being drawn from all 50 States. All States saw their spending authority cut from over 95 percent to 88.1 percent. The FHWA's misunderstanding of our intent resulted in redistribution of 8 percent Federal highway program without discussion or debate by Congress. A few States can recoup their losses by receiving interstate discretionary funds. Unfortunately, States like mine, the State of Iowa, which already have completed their interstates gave up funds needed for other important projects.

Mr. President, I ask unanimous consent that I may enter material in the RECORD to more fully explain the issue. I will include a brief paper explaining the problem and will also include the FHWA notices setting forth the reductions in obligation authority.

There bing no objection, the material was ordered to be printed in the RECORD, as follows:

STATES LOSSES IN OBLIGATION AUTHORITY DUE TO REVISION IN LIMITATIONS

[In thousands of dollars]

	Fiscal year—		Reduction
	1987	1988	
Alabama	243,937	233,107	10,830
Alaska	145,314	134,787	10,527
Arizona	126,309	117,465	8,844
Arkansas	103,727	95,215	8,512
California	849,297	801,039	48,257
Colorado	169,332	162,904	6,428
Connecticut	259,442	246,660	2,782
Delaware	46,540	43,610	2,930
District of Columbia	78,713	74,427	4,285
Florida	377,060	360,261	16,799
Georgia	280,310	258,797	21,513
Hawaii	127,500	122,198	5,302
Idaho	76,165	74,378	1,788
Illinois	352,215	323,692	28,523
Indiana	184,181	167,262	16,919
Iowa	156,752	145,442	11,310
Kansas	135,797	125,160	10,637
Kentucky	154,349	143,467	10,883
Louisiana	246,234	233,699	12,535
Maine	53,856	50,638	3,218
Maryland	261,370	237,505	23,865
Massachusetts	505,722	482,292	23,431
Michigan	272,338	254,609	17,729
Minnesota	195,956	181,655	14,302
Mississippi	116,936	107,999	8,937
Missouri	224,660	205,119	19,541
Montana	97,653	94,249	3,404
Nebraska	97,447	88,063	9,383
Nevada	67,392	62,865	4,527
New Hampshire	51,148	47,424	3,723
New Jersey	300,314	280,175	20,139
New Mexico	98,323	91,029	7,295
New York	603,004	565,490	37,514
North Carolina	220,687	202,991	17,696
North Dakota	69,702	64,103	5,598
Ohio	324,350	312,073	12,277
Oklahoma	138,740	129,162	9,578
Oregon	120,850	111,574	9,276
Pennsylvania	478,431	447,507	30,924
Rhode Island	96,506	90,738	5,768
South Carolina	116,079	111,890	4,189
South Dakota	74,030	65,467	8,563

STATES LOSSES IN OBLIGATION AUTHORITY DUE TO REVISION IN LIMITATIONS—Continued

[In thousands of dollars]

	Fiscal year—		Reduction
	1987	1988	
Tennessee	210,872	199,621	11,251
Texas	597,889	556,991	40,899
Utah	107,461	101,269	6,192
Vermont	49,591	47,035	2,556
Virginia	228,130	217,546	10,584
Washington	247,188	241,207	5,981
West Virginia	101,067	97,398	3,669
Wisconsin	154,339	145,682	8,657
Wyoming	72,835	64,528	8,307
Other	68,869	61,137	7,732
Total	10,536,908	9,880,600	656,308

States participating in voluntary lapse of interstate construction apportionments

Alabama	$88,000,000
California	281,000,000
Massachusetts	361,000,000
Idaho	23,000,000
Maryland	66,000,000
New Jersey	94,000,000
Pennsylvania	120,000,000
Washington	40,000,000
Washington, DC	34,000,000
Total	1,100,000,000

FISCAL YEAR 1988 HIGHWAY OBLIGATION AUTHORITY

PROBLEM

Reduced formula obligation authority due to increased interstate construction discretionary funds. Result: cutting projects in the state's highway construction program. This does not take any Gramm-Rudman-Hollings cuts into account and it is not a one-year problem.

BACKGROUND

Most states have based their 1988 highway construction program on the assumption that the formula obligation authority would remain the same as last year, 95.4 percent of the apportionments. However, on Oct. 1, FHWA notified the states that their formula obligation authority was reduced to 88.1 percent.

Technically, all states lose a portion of their formula obligation authority because FHWA had to cover increased funds accumulating in the discretionary "reserve account". Increases to the reserve account were made possible by an FHWA instruction, in accordance with an obscure provision in the 1987 highway bill, which did two things:

It allowed states to voluntarily "lapse" their apportionments, made available in 1987 and 1988, for interstate construction funds which they do not propose to use. Without the provision in the 1987 highway bill, states would not have been able to lapse the 1988 funds this early. Lapsed apportionments are placed in the interstate construction discretionary fund. The states were not required to lapse obligation authority with their apportionments. Only a very few states will benefit from this provision since most states have either completed or nearly completed their system.

It guaranteed that those same few states who lapsed formula interstate construction apportionments would be eligible for interstate construction discretionary funding—with new additional obligation authority.

A likely scenario is as follows:

1. An Interstate construction state can lapse its interstate construction apportionment, and retain its entire obligation authority. They may use this obligation authority for other category projects such as federal aid primary, federal aid secondary, railroad crossings and the like.

2. FHWA places lapsed apportionment into "reserve account" for distribution as Interstate Construction Discretionary funding beginning October 1, 1987.

3. FHWA uses the formula obligation authority taken from all states to create new obligation authority for the increased amount in interstate construction discretionary fund. However, only states with interstate yet to complete are eligible for the interstate construction discretionary fund. All other states have lost obligation authority.

Thus, states which have completed or are close to completion of their Interstate Systems lose twice: we lose desperately-needed formula obligation authority and we are shut out of trying for interstate discretionary funds. This is not a one-year problem.

FEDERAL-AID HIGHWAY PROGRAM OBLIGATIONS

EXPIRATION DATE: OCTOBER 1, 1988

1. *Purpose.*—To advise of tentative limitation on Federal-aid highway program obligations for fiscal year (FY) 1988 and the tentative distribution of this limitation among the States.

2. *Limitation-legislative provisions.*—Based on a review of House Joint Resolution 362 Making Continuing Appropriations for Fiscal Year 1988, and For Other Purposes together with the House action on the Department of Transportation and Related Agencies Appropriation Act of 1988 and the Surface Transportation and Uniform Relocation Assistance Act of 1987, provisions on the limitation of obligations are as follows:

a. Obligations for Federal-aid highways are limited to $12.35 billion for FY 1988.

b. This limitation shall not apply to obligations for projects covered under:

(1) Sections 125, 157, and 320 of Title 23, United States Code (23 U.S.C.);

(2) Section 147 of the Surface Transportation Assistance Act of 1978;

(3) Section 118 of the Union Station Redevelopment Act of 1981;

(4) Section 9 of the Federal-Aid Highway Act of 1981;

(5) Obligations to carry out the provisions of Sections 131(b) and 131(j) of the Surface Transportation Assistance Act of 1982 (Public Law 97-424);

(6) Section 404 of the Surface Transportation Assistance Act of 1982; or

(7) Obligations of funds made available under subsections (b) and (c) of Section 149 of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

c. Each State is guaranteed sufficient authority to prevent lapse of sums authorized to be appropriated for Federal-aid highways and highway safety construction which have been apportioned or allocated to a State, except in those instances in which a State indicates its intention to lapse sums apportioned under 23 U.S.C. 104(b)(5)(A).

d. Amounts authorized for administration, the Federal Lands Highways Program, studies under Sections 159, 164, and 165 and the Demonstration Program under Section 149(d) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and the Strategic Highway Research program are charged to the limitation but are excluded from the State-by-State distribution.

e. After August 1, 1988, the Secretary will revise a distribution of funds made available if a State does not plan to obligate the amount distributed during FY 1988 and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during FY 1988. The redistribution will give priority to those States having large unobligated balances of funds apportioned under 23 U.S.C. 104, and priority to those States which, because of statutory changes made by the Surface Transportation Assistance Act of 1982 and the Federal-Aid Highway Act of 1981, have experienced substantial proportional reductions in their apportionments and allocations.

f. After August 1 and on or before September 30, 1988, a State which obligates the amount distributed in FY 1988 under the distribution based on apportioned and allocated funds, as well as any redistributed amounts made available after August 1, 1988, may obligate for Federal-aid highways and highway safety construction on or before September 30, 1988, an additional amount not to exceed 5 percent of the aggregate amount of the following:

(1) Funds apportioned or allocated to that State under Sections 104, 130, 144, and 152 of 23 U.S.C. and

(2) For highway assistance projects under Section 103(e)(4) of 23 U.S.C. which are not obligated on the date such State completes obligation of the amount so distributed. The aggregate amount which may be obligated by all States under this additional obligation authority cannot exceed 2.5 percent of the aggregate amount of funds as defined in (1) and (2) above which would not be obligated in FY 1988 if the $12.35 billion amount of obligational authority were utilized. No State may utilize this additional obligational authority that does not utilize all obligation authority distributed to it for FY 1988 or does not utilize all additional obligation authority redistributed to it after August 1. In addition, this provision will not apply to any State releasing formula obligation authority for the August redistribution.

g. Funds apportioned for FY 1988 or allocated to the States during FY 1988 are to be used to determine the factors for making a State-by-State distribution of the obligation limitation. The State-by-State distribution of the FY 1988 obligation limitation shown on Attachment 1 is based on actual apportionments of FY 1989 Interstate Construction, FY 1989 Interstate 4R funds, and FY 1988 non-Interstate funds.

h. Pursuant to the National Minimum Drinking Age Act, Section 158, 23 U.S.C., three States, as defined by 23 U.S.C., have been found in noncompliance. These States are South Dakota, Wyoming and Puerto Rico. Accordingly, a portion of these States apportionments made during fiscal year 1987 and 1988, of Interstate Construction, Interstate 4R, Primary, Secondary and Urban System funds have been withheld. Obligation authority equal to 88.1 percent of the funds withheld has been reserved in the event that the State comes into compliance and the funds are apportioned. If any State is not in compliance by August 1, the reserved obligation authority will be redistributed among the States as described in paragraph 2.e. above.

3. *Discretionary and/or other non-formula funds.*—Obligational authority is reserved for discretionary and/or other non-formula funds estimated to be allocated during the fiscal year. A proportional share of obligational authority will be distributed with each allocation of funds during FY 1988 consistent with the proportional share dis-

tributed by formula. Such allocations increase the total annual limitation distributed to the State for FY 1988.

4. *Total limitation.*—Obligation authority available for distribution in FY 1988 is less than the total apportionments and allocations for the year on which the distribution is based. The same pro rata share of 88.1 percent is thus available for both formula and non-formula distribution. Attachment 1 shows each State's share of the limitation distributed by formula and the amounts reserved for non-formula programs.

5. *Federal Lands program.*—Obligation authority for the Federal Lands Highways program has been reserved from distribution. Distribution of the reserved authority will be made by the associate Administrator for Engineering and Program Development.

6. *Funds subject to FY 1988 limitation.*—Obligation of the funds shown on Attachment 2 are chargeable to the FY 1988 limitation, as well as obligations of urban system funds for non-highway mass transit projects approved pursuant to 23 U.S.C. 142(a)(2). Also shown are funds exempt from the limitation.

7. *Territories.*—Obligation of apportionments of Hazard Elimination funds and the distribution of Consolidated Primary funds to the territories of American Samoa, Guam, Northern Marianas and the Virgin Islands are subject to the FY 1988 limitation on Federal-aid highway programs. Attachment 1 provides authority to each of the territories based on their share of the FY 1988 Hazard Elimination apportionment. With respect to the territories' share, attachment 1 also provides authority based on the FY 1988 apportionment of Consolidated Primary funds to the States or Territories. Distribution of this authority among the separate territories will be provided by the Associate Administrator for Engineering and Program Development and together with the authority provided by this Notice constitutes each territory's total available obligation authority for FY 1988.

8. *Tentative provisions.*—The program level and allocations among the States are tentative and subject to revision upon passage of the FY 1988 Appropriation Act or other enacted legislation.

9. *Action.*—a. By October 15, 1987, each State shall advise the Division Administrator of (1) the amount it can obligate in excess of its 25 percent share (up to a maximum of 35 percent) or, (2) the amount that can be released during the first quarter for obligation by other States. The responses shall be forwarded by the Division Administrator to the regional office. By October 21 each Regional Administrator shall advise the Washington Headquarters, HFS-30, on a State-by-State basis of the additional authority required or the amount that can be released for obligation by other States. Upon review of the regional reports, the Washington Headquarters will advise of the redistribution, if any, of the first quarter obligation authority. Any redistribution in the first quarter will not change the total allocation for any State. b. Division Administrators should ensure that copies of this Notice are furnished to State Highway Agencies.

R.A. BARNHART.

[Attachment 1]

U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION: TENTATIVE DISTRIBUTION OF LIMITATION ON FEDERAL-AID HIGHWAY PROGRAM OBLIGATIONS FOR FISCAL YEAR 1988

[Limitation in thousands]

State	Tentative fiscal year 1988 obligation limitation	
	Amount	First quarter 25 percent
Alabama	233,107	58,276
Alaska	134,787	33,696
Arizona	117,465	29,366
Arkansas	95,215	23,803
California	801,039	200,259
Colorado	162,903	40,725
Connecticut	246,660	61,665
Delaware	43,610	10,902
Florida	360,261	90,065
Georgia	258,796	64,699
Hawaii	122,198	30,549
Idaho	74,378	18,594
Illinois	323,692	80,923
Indiana	167,262	41,815
Iowa	145,442	36,360
Kansas	125,160	31,290
Kentucky	143,467	35,866
Louisiana	233,699	58,424
Maine	50,638	12,659
Maryland	237,505	59,376
Massachusetts	482,292	120,573
Michigan	254,609	63,652
Minnesota	181,655	45,413
Mississippi	107,999	26,999
Missouri	205,119	51,279
Montana	94,249	23,562
Nebraska	88,063	22,015
Nevada	62,865	15,716
New Hampshire	47,424	11,856
New Jersey	280,175	70,043
New Mexico	91,029	22,757
New York	565,490	141,372
North Carolina	202,991	50,747
North Dakota	64,103	16,025
Ohio	312,072	78,018
Oklahoma	129,162	32,290
Oregon	111,574	27,893
Pennsylvania	447,507	111,876
Rhode Island	90,738	22,684
South Carolina	111,890	27,972
South Dakota	65,468	16,367
Tennessee	199,621	49,905
Texas	556,991	139,247
Utah	101,269	25,317
Vermont	47,035	11,758
Virginia	217,546	54,386
Washington	241,207	60,301
West Virginia	97,398	24,349
Wisconsin	145,682	36,420
Wyoming	64,528	16,132
District of Columbia	74,427	18,606
Puerto Rico	49,683	12,420
American Samoa	367	91
Guam	367	91
Northern Marianas	367	91
Virgin Islands	367	91
Territories	9,987	2,496
Subtotal	9,880,600	2,470,122
Penalty reserve	26,384	6,596
Administration	213,000	
Federal lands	235,000	
SHRP	30,850	
Studies	1,980	
Demos	106,805	
Allocation reserve	1,855,381	463,845
Total	12,350,000	2,940,563

[Attachment 2]

U.S. DEPARTMENT OF TRANSPORTATION: FEDERAL HIGHWAY ADMINISTRATION—FUNDS SUBJECT TO FEDERAL-AID HIGHWAY PROGRAM: OBLIGATION LIMITATION FOR FISCAL YEAR 1988

Fund	Appropriation codes
Interstate Construction	042, 043, 041, 04C, 04D, 050, 04N, 188, A51, 055, 059, 17A, 193, X42
Interstate Gap Closing	045, 046
Interstate 4R	044, 047, 04R, 199, 04A, X44, 04B
Interstate Discretionary—Construction	054, 057, 05R
Interstate 4R—Maryland	058, 05A, 05B
Interstate Discretionary—4R	056
Rail-Highway Crossings on Any Public Road.	138, 139, 13J, 13K, 13Y, 13W
Hazard Elimination	141, 14M
Consolidated Primary	010, A04, A14, X14, 110, 01L, 195, A06, A65, A35, A61, A85, 196, 11L, A95, A16, A75, A45, A86, 197, X15, 01B, 01A
Combined Road Plan	CR1
Rural Secondary	075, 076, B08, X75, 07F, 07G, 079, 07T, B06, B65, B35, 02A, B61, B85, 07Y, B16, B75, B45, B86
Urban System—Attributable	W36, W33, W3G, W3H, M36, W38, W61, W86, W05
Urban System—Not Attributable	W32, W37, X30, W3C, W3D, M32, W3N, W06, W65, W35, W62, W85
Urban System—PR	W08
HPR	070
Metropolitan Planning	082
Public Lands—FY 1983 and subsequent.	183, K83
Indian Reservation Roads	163, K63
Parkways and Park Highways	179 (Parkways), 180 (Park Highways), K79
Forest Highway—Allocated	191
Special Urban High Density	107, 10V
Special Bridge Replacement	115, 11F
Highway Bridge Replacement & Rehabilitation:	
Apportioned	114, 117, 118, 11W, R85, 11V, 11R, R86, 11A, 11B, 11C
Discretionary	119, 11Y
Talmadge Bridge	186
Franconia Notch	126
Bypass Highway Demonstration	157
Urgent Supplemental Bridges	113
Interstate Transfers:	
Apportioned	117, 192, 17D, 17E
Discretionary	178, 17W, 17F
Los Angeles Freight Transportation Demo, CA-131(a).	220
Buhne Point Shoreline Erosion Demo, CA-131(c).	221
E. Baton Rouge Interchange Congestion Demo, LA-131(d).	222
Louisville Primary Connector Accel. Demo, KY-131(e).	223
Vermont Certification Demo—131(f)	224
Devils Lake—Erosion Demo. ND-131(g).	225
Bridge Over Intercoastal Waterway Demo, FL-131(h).	226
Idaho Truck Safety/Railroad Elimin. Demo—131(i).	227
Acosta Bridge—Florida	169
Studies:	
Section 159 Rail-Hwy Crossing	
Section 164 Hwy Electrification Systems.	
Section 165 Highway Upgrading	
Section 167 California Feasibility Study.	
Demos—Section 149	309
Exempt from FY 1988 Obligation Limitation	
Bridges on Federal Dams	072
Emergency Relief	098, 099, 088, 089
Minimum Allocation	160, 16L, N85, 185
Acceleration of Bridges	116
Union Station	129
Woodrow Wilson Bridge	128
State of the Art Technology/Gap Closing Demo, PA—131(b).	228
Usable Segements Demo, IL-131(j).	229
Alaska Highway:	
Primary	184
Interstate	187
Hazard Elimination	189
Veh-Ped Demo	311
Section 149(B)	307
Section 149(c)	308

U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION

[Summary of fiscal year 1989 interstate and fiscal year 1988 noninterstate apportionments as of October 1, 1987]

State	Interstate construction	Interstate 4R	Consolidated primary	Rural secondary	Urban system	Bridge replacement and rehabilitation	Hazard elimination	Rail-highway crossings	Interstate transfer	Metropolitan planning	Total
Alabama	117,680,347	47,425,138	41,509,135	12,180,295	9,465,325	29,529,931	2,979,854	3,248,593	0	566,644	264,585,262
Alaska	13,857,628	21,602,034	74,659,695	32,262,424	3,656,578	3,431,000	833,000	2,449,063	0	236,782	152,988,204
Arizona	18,613,720	55,921,535	31,521,319	9,927,237	9,445,922	3,431,000	2,246,311	1,568,217	38,073	614,186	133,327,520
Arkansas	13,857,628	27,617,976	28,381,222	10,593,304	4,464,411	18,519,166	2,014,894	2,387,285	0	236,782	108,072,668
California	300,992,026	246,581,053	167,084,124	23,967,129	92,603,182	39,677,182	14,354,693	10,200,542	7,402,479	6,346,008	909,208,418
Colorado	57,700,052	49,642,621	34,374,243	11,030,433	9,801,075	14,820,410	2,330,986	2,193,582	2,360,526	647,399	184,901,327
Connecticut	69,423,474	32,907,230	25,239,177	3,851,259	10,493,573	50,490,459	1,850,276	1,024,222	83,945,526	742,967	279,968,163
Delaware	13,857,628	12,724,357	11,335,392	2,925,263	3,656,578	3,431,000	833,000	498,564	0	236,782	49,498,564
Florida	160,013,547	89,521,904	75,266,834	14,826,257	34,886,723	21,166,113	6,193,019	4,650,803	0	2,384,257	408,909,457
Georgia	64,788,633	89,681,727	55,428,828	15,742,686	13,914,180	36,098,786	4,004,863	4,594,656	8,653,449	835,541	293,743,349
Hawaii	103,106,623	12,724,357	11,335,392	2,925,263	3,656,578	3,486,445	833,000	394,459	0	236,782	138,698,899
Idaho	25,553,589	23,195,226	18,308,316	7,235,344	3,656,578	3,552,732	1,246,985	1,435,751	0	236,782	84,421,303
Illinois	13,857,628	90,910,655	89,740,869	16,992,093	40,129,885	40,316,309	7,455,620	8,216,095	57,120,378	2,662,011	367,401,543
Indiana	13,954,093	56,510,571	52,531,477	13,836,717	14,533,768	25,135,232	3,861,033	4,881,333	3,769,227	834,872	189,848,323
Iowa	13,857,628	36,700,148	35,240,268	12,699,397	6,651,839	29,594,159	2,717,259	3,749,407	23,572,626	299,090	165,081,821
Kansas	13,857,628	37,177,521	33,224,762	11,995,077	6,217,747	31,829,799	2,636,943	4,847,464	0	274,278	142,061,119
Kentucky	20,472,613	45,524,941	39,494,429	12,182,759	7,437,412	31,976,371	2,664,128	2,691,668	0	395,643	162,839,964
Louisiana	118,151,267	45,168,398	38,805,768	9,830,837	11,858,764	34,745,600	2,835,708	3,154,298	0	706,647	265,257,287
Maine	13,857,628	12,724,357	14,457,976	5,115,031	3,656,578	5,664,169	833,000	930,138	0	236,782	57,475,659
Maryland	109,823,425	38,408,947	33,957,128	5,582,863	14,387,244	20,665,325	2,521,475	1,516,176	41,706,252	1,008,257	269,577,092
Massachusetts	386,327,628	32,221,604	44,576,879	5,993,283	20,390,720	42,725,145	3,389,339	1,985,563	8,381,499	1,426,574	547,418,234
Michigan	43,919,456	83,572,028	82,563,781	17,526,929	27,574,122	20,551,827	6,130,887	5,295,986	0	1,855,719	288,990,735
Minnesota	61,095,631	46,635,971	43,606,750	14,556,552	11,057,778	18,745,200	3,487,276	4,180,914	2,159,283	659,234	206,184,589
Mississippi	13,857,628	32,097,120	31,795,924	10,713,819	4,662,834	24,931,430	2,084,158	2,203,113	0	236,782	122,582,808
Missouri	13,857,628	71,504,352	51,719,851	15,699,930	13,687,288	57,485,444	3,849,351	4,172,226	0	840,956	232,817,026
Montana	13,857,628	40,916,111	26,672,476	11,020,427	3,656,578	7,807,035	1,165,404	1,643,048	0	236,782	106,975,489
Nebraska	13,857,628	21,773,143	25,217,648	9,388,568	4,025,266	19,495,628	1,793,938	2,719,528	1,446,774	236,782	99,954,903
Nevada	13,857,628	22,477,561	18,902,713	7,110,431	3,656,578	3,431,000	887,858	793,736	0	236,782	71,354,287
New Hampshire	13,857,628	12,724,357	11,335,392	2,925,263	3,656,578	7,622,996	833,000	636,278	0	236,782	53,828,274
New Jersey	101,371,656	30,111,765	53,434,622	5,240,451	28,088,050	64,326,309	4,253,336	2,691,178	26,471,613	2,019,358	318,008,338
New Mexico	13,857,628	42,528,906	25,887,882	9,755,334	3,846,099	4,762,502	1,249,701	1,195,878	0	236,782	103,320,712
New York	13,857,628	88,690,609	134,681,785	17,438,927	63,285,408	137,240,000	10,442,701	6,181,271	165,606,672	4,426,183	641,851,814
North Carolina	44,836,510	47,066,430	64,683,918	17,509,717	11,330,129	36,227,380	4,090,899	4,014,260	0	642,572	230,401,815
North Dakota	13,857,628	20,565,097	17,498,580	7,116,265	3,656,578	5,770,256	1,245,631	2,812,696	0	236,782	72,759,513
Ohio	31,204,625	104,157,512	93,769,229	18,277,419	33,397,931	48,847,833	6,894,944	6,618,335	8,947,155	2,098,509	354,213,492
Oklahoma	13,857,628	36,265,853	34,570,481	11,797,779	8,137,333	35,532,534	2,760,728	3,274,328	0	406,613	146,603,277
Oregon	17,944,518	38,468,030	29,444,927	9,908,845	7,272,081	10,298,627	2,381,528	2,171,409	8,343,426	407,051	126,640,442
Pennsylvania	160,608,393	66,536,743	107,743,197	22,151,863	34,318,043	93,567,762	7,487,388	5,820,216	7,402,479	2,300,728	507,936,812
Rhode Island	13,857,628	12,724,357	11,335,392	2,925,263	3,656,578	3,431,000	833,000	442,823	53,530,638	253,819	102,990,498
South Carolina	20,447,828	48,661,514	32,936,860	9,074,054	6,717,225	11,727,707	2,313,886	2,737,825	0	381,839	126,998,738
South Dakota	12,471,866	22,885,014	16,856,751	6,939,593	3,290,921	8,762,637	1,133,047	1,730,731	0	236,782	74,307,342
Tennessee	13,857,628	62,203,155	46,887,886	13,455,694	11,431,360	50,930,038	3,305,678	3,178,349	20,657,322	669,683	226,576,793
Texas	131,609,656	202,914,696	132,584,347	37,362,614	47,233,586	56,358,018	10,516,862	10,694,987	0	2,929,846	632,204,612
Utah	37,822,285	39,330,815	19,824,745	6,571,063	5,141,287	3,431,000	1,294,890	1,190,891	0	336,895	114,943,871
Vermont	13,857,628	12,870,322	11,335,392	2,925,263	3,656,578	7,040,137	833,000	631,769	0	236,782	53,386,871
Virginia	68,754,272	69,791,604	49,846,575	12,860,683	14,816,318	23,066,201	3,517,053	2,705,129	587,412	977,155	246,922,402
Washington	116,168,448	55,316,984	39,771,122	10,195,924	12,668,502	32,871,862	3,027,571	2,916,406	0	841,386	273,778,205
West Virginia	13,857,628	19,198,984	23,695,192	7,528,252	3,656,578	39,283,029	1,399,233	1,694,737	0	236,782	110,550,415
Wisconsin	13,857,628	34,557,147	48,134,349	13,576,458	12,313,728	34,588,734	3,625,523	3,950,995	0	749,978	165,354,540
Wyoming	12,471,866	30,097,206	15,588,319	6,384,553	3,290,921	3,431,000	833,000	907,392	0	236,782	73,241,039
District of Columbia	36,558,238	12,724,357	11,335,392	0	3,656,578	7,117,541	833,000	218,542	11,797,191	236,782	84,477,621
Puerto Rico	0	11,451,922	26,957,295	3,545,242	7,902,736	3,431,000	1,794,243	757,145	0	551,895	56,391,478
American Samoa	0	0	0	0	0	0	416,500	0	0	0	416,500
Guam	0	0	0	0	0	0	416,500	0	0	0	416,500
N. Marianas	0	0	0	0	0	0	416,500	0	0	0	416,500
Virgin Islands	0	0	0	0	0	0	416,500	0	0	0	416,500
Territories	0	0	11,335,392	0	0	0	0	0	0	0	11,335,392
Total	2,768,754,101	2,537,711,965	2,308,427,398	583,178,126	729,706,230	1,372,400,000	166,600,000	156,800,000	543,900,000	47,356,499	11,214,834,319

RELEASE OF INTERSTATE CONSTRUCTION FUNDS BY STATES PURSUANT TO SECTIONS 102(b)(2) AND 114(a) OF THE FEDERAL-AID HIGHWAY ACT OF 1987—AUGUST 27, 1987

1. PURPOSE

a. To establish procedures and to advise the States of how they may release Interstate Construction funds pursuant to Sections 102(b)(2) and 114(a) of the Federal-Aid Highway Act of 1987.

b. To eliminate the provisions of paragraph 2c of FHWA Notice N4550.2 dated July 9, 1987, so that States which utilize Sections 102(b)(2) and 114(a) will be eligible to apply for Interstate Discretionary funds.

2. CANCELLATION

FHWA Notice N4550.2, Release of Interstate Construction Funds by States Pursuant to Sections 102(b)(2) and 114(a) of the Federal-Aid Highway Act of 1987, dated July 9, 1987, is cancelled.

3. BACKGROUND

a. Section 102(b)(2) of the Federal-Aid Highway Act of 1987 provides that before the apportionment of Interstate Construction funds under 23 U.S.C. 104(b)(5)(A) for any fiscal year, if the Secretary and the State highway department agree that a portion of the anticipated apportionment is not needed for such year, the amount of such portion shall be made available for allocation from the Interstate Discretionary Fund under Section 118(b)(2) of 23 U.S.C.

(1) For the purpose of determining the State's formula portion of the obligation limitation, as required by Section 105(c) of the Federal-Aid Highway Act of 1987, only the amount of the apportionment released to the State will be used in computing the State's share.

(2) The next Interstate Cost Estimate used to apportion funds will be adjusted to reflect only those funds actually released to the State.

b. Section 114(a) of the Federal-Aid Highway Act of 1987 amends 23 U.S.C. 118(b)(2) to provide, upon request of the State, that the period of availability for Interstate Construction Funds apportioned before October 1, 1989, be reduced by one fiscal year.

(1) These funds will be made available for allocation from the Interstate Discretionary Fund at the end of the reduced period of availability.

(2) The Interstate Cost Estimate used to apportion funds will be adjusted to reflect the released amounts to the State's cost-to-complete.

(3) In order to assure that sufficient obligation authority is available to provide a proportionate share with Interstate Discretionary allocations made during the fiscal year, FHWA must determine in advance the funds that will be available. Therefore, notification prior to the beginning of the fiscal year is essential for Interstate funds to be released under this Section so that obligation authority can be reserved to allow allocation of these funds during the next fiscal year.

4. ACTION

a. A State which determines that a portion of its FY 1989 apportionment of Interstate Construction funds will not be needed shall advise the FHWA Division Administrator by September 10, 1987, of its determination. The Division Administrator is to review the request and forward it, along with an appropriate recommendation, to the Regional Administrator by September 14, 1987. The Regional Administrator is to forward the request and recommendation to the Office of Fiscal Services (HFS-30) by close-of-business September 15, 1987. States will be notified of the action on their requests following appropriate Headquarters review. To assure that we have complete in-

formation, negative reports for those States not utilizing this provision are requested.

b. A State electing to reduce the period of availability of its FY 1988 Interstate Construction Fund apportionment by one year, pursuant to Section 114(a), is to advise the Division Administrator by September 10, 1987, of its decision. The Division Administrator is to advise the Regional Administrator by close-of-business September 14, 1987. By close-of-business September 15, 1987, each Regional Administrator is to report this information to the Office of Fiscal Services (HFS-30). Negative reports for those States not utilizing this provision are requested.

c. The reports required in 3 a and 3 b above may be combined.

d. Division Administrators assure that copies of this Notice are furnished to State highway agencies.

R. A. BARNHART,
Federal Highway Administrator.

RELEASE OF INTERSTATE CONSTRUCTION FUNDS BY STATES PURSUANT TO SECTIONS 102(b)(2) AND 114(a) THE FEDERAL-AID HIGHWAY ACT OF 1987—JULY 9, 1987

1. PURPOSE

To establish procedures and to advise the States of how they may release Interstate Construction funds pursuant to Sections 102(b)(2) and 114(a) of the Federal-Aid Highway Act of 1987.

2. BACKGROUND

a. Section 102(b)(2) of the Federal-Aid Highway Act of 1987 provides that before the apportionment of Interstate Construction funds under 23 U.S.C. 104(b)(5)(A) for any fiscal year, if the Secretary and the State highway department agree that a portion of the anticipated apportionment is not needed for such year, the amount of such portion shall be made available for allocation from the Interstate Discretionary Fund under Section 118(b)(2) of 23 U.S.C.

(1) For the purpose of determining the State's formula portion of the obligation limitation, as required by Section 105(c) of the Federal-Aid Highway Act of 1987, only the amount of the apportionment released to the State will be used in computing the State's share.

(2) The next Interstate Cost Estimate used to apportion funds will be adjusted to reflect only those funds actually released to the State.

b. Section 114(a) of the Federal-Aid Highway Act of 1987 amends 23 U.S.C. 118(b)(2) to provide, upon request of the State, that the period of availability for Interstate Construction Funds apportioned before October 1, 1989, be reduced by one fiscal year.

(1) These funds will be made available for allocation from the Interstate Discretionary Fund at the end of the reduced period of availability.

(2) The Interstate Cost Estimate used to apportion funds will be adjusted to reflect the released amounts to the State's cost-to-complete.

(3) In order to assure that sufficient obligation authority is available to provide a proportionate share with Interstate Discretionary allocations made during the fiscal year, FHWA must determine in advance the funds that will be available. Therefore, notification prior to the beginning of the fiscal year is essential for Interstate funds to be released under this Section so that obligation authority can be reserved to allow allocation of these funds during the next fiscal year.

c. Any State that releases a portion of its apportionment or reduces the period of availability of its previously apportioned Interstate Construction funds will not be eligible for Interstate Discretionary funds in the year in which the apportionment or unobligated balance of funds is adjusted.

3. ACTION

a. A State which determines that a portion of its FY 1989 apportionment of Interstate Construction funds will not be needed shall advise the FHWA Division Administrator by September 10, 1987, of its determination. The Division Administrator is to review the request and forward it, along with an appropriate recommendation, to the Regional Administrator by September 14, 1987. The Regional Administrator is to forward the request and recommendation to the Office of Fiscal Services (HFS-30) by close-of-business September 15, 1987. States will be notified of the action on their requests following appropriate Headquarters review. To assure that we have complete information, negative reports for those States not utilizing this provision are requested.

b. A State electing to reduce the period of availability of its FY 1988 Interstate Construction Fund apportionment by one year, pursuant to Section 114(a), is to advise the Division Administrator by September 10, 1987, of its decision. The Division Administrator is to advise the Regional Administrator by close-of-business September 14, 1987. By close-of-business September 15, 1987, each Regional Administrator is to report this information to the Office of Fiscal Services (HFS-30). Negative reports for those States not utilizing this provision are requested.

c. The reports required in 3 a. and 3 b. above may be combined.

d. Division Administrators should assure that copies of this Notice are furnished to State highway agencies.

R.A. BARNHART,
Federal Highway Administrator.

Two hypothetical examples demonstrating the impact of "the problem".

[Dollar amounts in millions]

	Apportionments	Obligation authority	Percent
State A:			
Fiscal year 1987	$890	$850	
Voluntary lapse	280	0	
Total	610	850	95.4
Fiscal year 1988	900	800	
Interstate construction discretionary funds	+250	220	
Total	1,150	1,020	88.1
2-year total	1,760	1,870	106.2
State B:			
Fiscal year 1987	165	156	95.4
Voluntary lapse	0	0	
Total	165	156	
1988	165	145	88.1
Interstate construction discretionary funds	0	0	
Total	165	145	
2-year total	330	300	91.0

RESOLUTION REQUESTING ACTION TO PREVENT DOUBLE-DIPPING OF OBLIGATION CEILING

Whereas, Section 114(a) of the Federal-Aid Highway Act in 1987 allows states to reduce by one year the period of availability of Interstate construction apportionment; and

Whereas, the Federal Highway Administration (FHWA) originally determined that states which released their Interstate apportionment prior to the maximum period of availability were not eligible for discretionary funds in the same year; and

Whereas, FHWA has subsequently reversed that decision and determined that states which so released their apportionment early would be eligible for discretionary Interstate allocations the same year; and

Whereas, this determination allows a few states to secure unwarranted, extra obligation authority by obtaining such authority first for Interstate apportionment and then again for a discretionary allocation, thereby "double-dipping" obligation authority for the same Interstate highway construction funds; and

Whereas, this situation is unfairly penalizing nearly all the other states; and

Whereas, this situation is exacerbating the hardship for the states caused by the extraordinarily large Interstate discretionary pot resulting from over $1.1 billion of Interstate apportionment released early in FY 1987, which has in turn resulted in obligation authority covering only 88.1 percent of apportionments and allocations; and

Whereas, this double-dipping is a perversion of the federal highway program, and works against speedy completion of the Interstate system because it encourages states to use obligation authority on non-Interstate projects;

Now, therefore be it Resolved, that the Mississippi Valley Conference States call on Congress to take action to correct this ability to "double dip" obligation authority in future years.

Be it further Resolved, that this resolution be communicated to AASHTO and to FHWA.

IOWA DEPARTMENT OF TRANSPORTATION,
Ames, IA, December 2, 1987.

WILLIAM S. RITCHIE, Jr.,
Commissioner, West Virginia Department of Highways, Washington Street, East, Charleston, WV.

DEAR COMMISSIONER RITCHIE: Thank you for the time and effort you've spent searching for solutions to our common problem of deep cuts in obligation authority as a result of an obscure provision in the '87 Highway Bill. It's hard to believe that the provision which allowed voluntary turnback of Interstate Construction apportionments resulted in a redistribution of 8 percent of the federal highway program without any public discussion or debate. It's harder still to accept that we can't do anything about it.

From conversations with your counterparts and mine in 16 other states, it's pretty clear that we're all thoroughly disgusted with the outcome and frustrated that solutions are shot full of holes or that key members of Congress refuse to act for a variety of reasons. We haven't given up and I'm sure you haven't either.

By way of information, I'm enclosing a list which is our best assessment of "winners and losers." However, as CAO's we can't emphasize strongly enough that in reality, there are only losers from this provision. The Highway Trust Fund is precarious at best . . . we see continued and growing support to use gas tax for some type of deficit reduction, if not this year, then next. The only hope in tough budget times for main-

taining the integrity of the fund is solid, unified and strong support from every state.

It's clear to me that this latest manipulation caused many of us to reassess our support; if there isn't a solution, I believe we'll see states seeking turnback of federal tax and programs. No one wins when that happens, either.

We must continue our efforts to make people understand what's happened—everyone from our Congressional delegations to individuals with a common interest in a strong transportation system that serves the Nation, not just a few areas.

If we have any hope of stopping further cuts and restoring lost obligation authority, we'll need facts and figures that run the gamut from construction contracts lost to people who'll be out of work. It seems important to also know how much state gas tax we'd each have to raise to make up the loss. If that information can be assembled quickly, I'd like to package it for simultaneous distribution to all our Congressional delegations. If you're interested in this approach, let me know during AASHTO.

I'm sure you're aware that we'll have an excellent opportunity to explore the problem during the Policy Committee meeting on Sunday. (Policy Committee must deal with a resolution from the Executive Committee of Mississippi Valley Conference of AASHTO which requests action on the issue.) It should be a lively discussion!

Sincerely,

WARREN B. DUNHAM, *Director.*

Same letter sent this date via Federal Express and also via AASHTO electronic mail to CAOs of the DOTs in the following 17 states:

Alaska, Delaware, Illinois, Kansas, Maine, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Vermont, West Virginia, and Wyoming.

Mr. GRASSLEY. Mr. President, the concept behind the voluntary lapse provision may well have been sound. Its implementation is flawed, however, and I believe causes a harm to many States which was unintentional. The effects of this problem, coupled with additional budget reductions are simply too much.

Frostbelt States like Iowa have long since made plans for the 1988 construction season. Those plans were made in good faith based on reasonable expectations for Federal highway funding. My State's transportation agency made their plans, notified their contractors, their suppliers, their operating engineers and their construction workers that the funding was on its way.

Our cities began to plan how they would use the funds to spur their rebuilding efforts. In America's heartland, we're just coming out of tough times, we're trying to turn the corner like the rest of the Nation, we have good people in the construction industry who only ask for the chance to work—who depand on the Federal highway programs for jobs—everyone from the prime contractor to the man or woman running the bulldozer. We've got minorities and women who are running their own companies, making decent wages, some for the first time, because of the Federal Highway Aid Program and it's special component—the Disadvantaged Business Enterprise [DBE] Program.

Mr. President, I cannot in good conscience allow our States to lose millions of dollars in Federal highway aid. We must redress this wrong. First we must clarify congressional intent so that FHWA revises its policy in one of two ways:

It can require States returning formula interstate funds to return obligation authority along with the funds; or

It can specify that a State which voluntarily returns formula interstate money cannot later be eligible for discretionary interstate money.

Second, we must return the lost obligation authority to the States. I urge you to join with me in correcting this problem.

RESIGNATION OF JUSTIN DART, JR.

Mr. WEICKER. Mr. President, I rise today with deep regret and anger to note the resignation of Justin Dart, Jr., from his position as Commissioner of the Rehabilitation Services Administration. Justin's courage, integrity, and commitment to the rights of disabled Americans are well-known. He has a lifetime of accomplishments behind him, including his efforts while serving on the National Council on the Handicapped to promote civil rights for persons with disabilities.

I might add, parenthetically, that the great laws that have been passed during the past 5 years, whether they dealt with protection and advocacy for disabled individuals, whether they amended Public Law 94-142, whether they dealt with attorneys' fees for those who sought civil rights protections for their disabled children in the courts, whether they dealt with amendments to various authorizations—none would have been possible were it not for the support of Justin Dart and his rallying of the grassroots constituencies behind the efforts of Congress.

Unfortunately, his resignation comes as no great surprise. There have been rumors for the last few months that he might be asked to resign amid the controversy that has surrounded the Rehabilitation Services Administration. These matters have been the subject of hearings in both the Senate and the House, and I have to express my frustration and dismay that there has been no resolution to this festering conflict.

I reserve my anger, rather, for the Secretary of Education, William Bennett, and those in the White House. I have to ask why there was no attempt by Secretary Bennett during these last several months to step in and at least attempt to resolve the differences between the Commissioner and the Assistant Secretary. Where was his commitment to ensuring that the Office of Special Education and Rehabilitative Services functioned in a unified and effective manner? I suspect that the answer is disturbingly simple: He just did not care. If the working relationship between Madeleine Will and Justine Dart appeared likely to self-destruct, he was willing to let it happen.

This experience has been very damaging to the administration of the rehabilitation programs. We have seen morale at RSA, already at a low ebb before Justin's arrival, plummet even further. We have seen the disability constituency groups pitted against each other and choosing sides. We have seen an enormous amount of energy that should have been directed toward moving the rehabilitation service system forward channeled, instead, into a continuing dispute over the management and control of that system.

There is a supreme irony in all of this that does not escape my notice and that I hope all of my friends in the disability community will reflect upon. This dispute, culminating in the resignation of Justin Dart, has done more damage to rehabilitation programs than anything the Department has tried to accomplish through its legislative, regulatory, and fiscal agenda.

One has only to look at the record since the beginning of this administration 7 years ago to see an affirmative commitment to dismantling disability programs within the Department of Education. Whether it was attempting to deregulate Public Law 94-142 back in 1982, or the consistency low priority placed on special education and vocational rehabilitation when it came to the budget, the administration has tried its best to weaken disability programs.

Fortunately, Congress and the disability constituency groups have joined forces to successfully repel those attacks. This unity has enabled us to go on the offensive and accomplish much during this time. There have been real increases in funding for special education and rehabilitation, when other components of the budget have suffered greatly. There have been exciting new programs created: Early intervention for handicapped infants, supported employment to assist the severely handicapped, and a protection and advocacy program for the mentally ill.

But I remind you, these victories were accomplished in spite of the foot-dragging of the administration at every step along the way. Seeing their agenda routinely thwarted, I do not doubt but that they saw the differences between Madeleine and Justin—whether managerial or philosophical, trivial or serious—as a golden opportu-

nity to foment disharmony, and divide the disability groups that were once united in their opposition to the administration's agenda. I would guess that those above Madeleine and Justin—from the Secretary of the White House—watched with glee as the tension and acrimony built to the point that the operation of the rehabilitation programs came to a virtual standstill. It looked as though the strategy of "divide and conquer" was going to win.

Well, I am here to say that we cannot afford to let them quietly claim victory. The stakes are too high. We have managed to survive 7 years, and within a year still remaining, we cannot let the accomplishments achieved thus far be negated.

So today I ask for three things. First, I hope that a new Commissioner will be selected who has the respect and trust of all the participants in the debate over the provision of rehabilitation services—both within and outside the Office of Special Education and Rehabilitative Services. Second, I hope that the Assistant Secretary, whose commitment to supported employment is second to none, will approach her job with a renewed spirit of cooperation and diplomacy, and that she will go the extra mile toward regaining the unity that has been lost. Third, I ask the State rehabilitation directors to go that extra mile, too, and reflect upon what they, and ultimately the thousands of disabled individuals who rely on their services, stand to lose if these differences go unresolved. Without our service providers, there simply is no rehabilitation system.

The loss of a fine Commissioner is a high price for all of us to pay. We must be vigilant to ensure that this sad chapter is closed, and we must move forward in unity, with a renewed and vigorous commitment to serving all individuals in need of rehabilitation services.

Justin said it best when he testified before the House Subcommittee on Select Education last month:

> Our agency, our community is confronted by grave challenges, magnificent opportunities and historic decisions. The time has come to rise above pride and protocol, to face reality, and to unite in responsible, democratic action * * * we have no excuse to fail. We cannot afford to fail.

Mr. President, I ask unanimous consent that the full statement of Justin Dart before the House Subcommittee on Select Education be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY JUSTIN DART, JR., COMMISSIONER, REHABILITATION SERVICES ADMINISTRATION

Mr. Chairman, it is a privilege to appear today before a Committee composed of and staffed by individuals who have been dedicated and successful advocates for the cause of human development.

Mr. Chairman, my prepared presentation and other material has been and will be submitted to you. Because the issues we address today involve the fundamental human rights of millions of people with disabilities, and the basic principles of democracy and good government of the President, the Congress and the Nation, I am going to depart from politics as usual protocol to make a statement of conscience.

Our agency, our community is confronted by grave challenges, magnificent opportunities and historic decisions. The time has come to rise above pride and protocol, to face reality, and to unite in responsible, democratic action.

During my tenure as Commissioner RSA has—thanks to the valiant efforts of our undermanned staff—accomplished much that is positive. Certainly, OSERS-RSA has, during the past few years, initiated the very progressive new programs indicated by our great supporter, Congressman Bartlett, and my distinguished colleague advocate, Assistant Secretary Madeleine Will.

But Mr. Chairman, based on my experience as Commissioner, and my personal research in each of the fifty states, and five of our largest Native American Nations, I must report to you that OSERS-RSA has been for many years, and is today, afflicted—particularly in its central office—by profound problems in areas such as management, personnel, and resource utilization. We are ravaged by disunity and hostility internally and in our vital relationships with our state agency and grantee partners, and certain other segments of the disability community. As I reported to Senator Harkins last month, I believe that these problems are negatively impacting services to citizens with disabilities.

Mr. Chairman, I have had almost no effective authority to contribute to management solutions. But that is no acceptable excuse. I took an oath and I accept a salary as Commissioner of RSA. I apologize to you and to the nation, that in spite of 14 months of struggle working literally 7 days a week, in spite of 8 months of appeals for serious attention and difinitive action through the regular channels, efforts by my colleagues and myself to resolve our problems have not been successful. Faced now with the possibility that paternalistic central control, nonprofessional management and policies of hostility will be institutionalized for years by current revisions of organization and policy, I ask for your help, and for that of the community.

The basic problem here is not simply that Justin Dart is involved in a trivial turf and personality conflict with Madeleine Will. Certainly it is not that the President, who campaigned on a platform of productive independence for all citizens and who endorsed the very progressive concepts advocated in Toward Independence, is personally dedicated to dismantling vocational rehabilitation and independent living.

The problem with our external relations is not, in my view, that the state vocational rehabilitation agencies oppose supported employment and other progressive rehabilitation services. My personal research has convinced me that while the problems of people with very severe disabilities have only begun to be solved, the great majority of the rehabilitation profession have—within the constraints of the law, limited resources and massive public prejudice—been effectively dedicated to solutions. They have, along with great advocacy groups like ARC, NFB, NAD, ACB, UCP, TASH, NAMI, NCIL, and NHIF created a firm foundation from which such solutions can occur.

Our problems are complex. We are confronted by a vast, inflexible federal system which, like the society it represents, still contains a significant proportion of individuals who have not yet overcome obsolete, paternalistic attitudes about disability and, indeed, about government itself. There is a resistance to any sharing of their centralized authority with people with disabilities, their families, advocates and professional service providers, in or out of the federal service. Good management is too often subordinated to the protection of power. And, tragically, a small but all too effective minority in the federal service and in the community seem dedicated to a divide and conquer strategy of promoting hostility among government, advocates and professional service providers.

At issue here are principles squarely endorsed by the President, the Congress, all the great leaders of our major political parties and the overwhelming majority of the American people.

Participatory democracy based on true federal-state-community-citizen partnerships;

Responsible administration of tax dollars in faithful pursuance of the law;

Quality, productivity and independence oriented, professionally administered public services;

And, most important, the civil and basic human rights of people with disabilities to have more than rubber stamp figurehead representation in government, to liberate themselves finally from the subservient dependency produced by millenia of prejudice and authoritarian paternalism, and to participate in the productive mainstream of society as fully independent, fully equal citizens of the first class.

The problems of OSERS-RSA must be solved; and with good faith by all who truly support the independence and equal rights of people with disabilities, they can be solved, and they can be solved without asking any party to compromise on any legitimate issue of principle.

Mr. Chairman, I respectfully appeal to you and your colleagues in Congress, and to all present for guidance, inspiration, moral leadership, and if necessary, support for legislative action which will enable RSA to meet its historic and expanding responsibilities in the nineties and as we enter the 21st century. Help us, above all, to overcome hate and hostility, and to unite.

Let us not seek scapegoats; let us seek solutions. We have no irredeemable enemies, only enemy attitudes.

We stand at an historic crossroads. We are approaching foundational decisions about the future of rehabilitation and the fundamental rights of people with disabilities.

We live in the richest nation in the history of mankind. We have great programs like basic vocational rehabilitation, independent living, supported employment and rehabilitation engineering. We have all the human, technological, economic and political resources necessary to effect a cultural revolution which will utilize the methods and products of science for the dignity and quality of human life.

We are responsible to millions of Americans, and because of the extraordinary influence of our culture, to hundreds of millions of people with disabilities throughout the world in this and future generations.

We are responsible to human beings who are forced to exist in conditions to which we would not subject our pet dogs and cats. We are responsible to potentially proud, productive people who are jobless, homeless, penniless and hopeless. We are responsible to hundreds of thousands who die years and decades before their time.

We have no excuse to sacrifice these responsibilities to self-indulgence and self-destructive hostility.

We have no excuse to fail. We cannot afford to fail.

Like the founders of our independence and our constitutional government, we must transcend politics, personality, turf and the corruption of power. We must join together in complementary unity with all who love justice to build on the firm foundation which you in the Congress and others in this room have laid. We must create a continuum of services, attitudes and environments which will enable all of our children's children in every nation to live lives of productivity, dignity and quality in the mainstream of society.

I will do anything—including, if necessary, playing another role—to cooperate with you and your colleagues in the Congress, with the administration, and with my colleagues in the disability community as we strive together to fulfill this sacred responsibility.

Thank you, Mr. Chairman.

Mr. WEICKER. Mr. President, I ask unanimous consent that a letter sent to the President of the United States by current and former Members of the Subcommittee on the Handicapped also be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. Senate, Committee on Labor and Human Resources,
Washington, DC, December 3, 1987.

HON. RONALD REAGAN,
President of the United States,
The White House, Washington, DC.

DEAR MR. PRESIDENT: We are distressed to learn that Justin Dart, a longtime champion of the rights of people with disabilities, has resigned as Commissioner of the Rehabilitation Services Administration. Mr. Dart's thoroughly distinguished record, achieved over many years as a private citizen and more recently as Commissioner, demonstrates his ability to push aside the barriers that confront people with disabilities, establish broad-based collegial relationships with advocacy groups and service providers, initiate and execute new policy in the delivery of services to people with disabilities, and retain the respect of even those who disagree with him.

His resignation is a loss to people with disabilities, their families, and those who provide services to them. As current and former members of the Subcommittee on the Handicapped, we have the highest respect for Mr. Dart and will be vigilant to assure that the programs that he has initiated and over which he had jurisdiction will not be impaired by his resignation.

Sincerely,

Lowell P. Weicker, Jr., Ranking Minority; Tom Harkin, Chairman; Thad Cochran, John F. Kerry, Robert T. Stafford, Howard M. Metzenbaum, Orrin G. Hatch, Brock Adams.

Mr. WEICKER. Mr. President, the formal part of my remarks is concluded, but I cannot leave the floor without observing that even now, having been rebuffed in the proper pursuit of his job, Justin is serving the disability community.

He met with me, persons from the National Council on the Handicapped, and various constituency groups in my office, along with Senator HARKIN, yesterday afternoon in order that we might present to this body a landmark piece of civil rights legislation on behalf of handicapped individuals.

This is a man who from his wheelchair has generated more in the way of support and ideas than those of us who stand on our feet and address the body.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. WIRTH). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 3 P.M.

Mr. BYRD. Mr. President, efforts are going forward to put together the leadership amendment to the reconciliation bill and it is going to take some time. So there is no point in having the Senate, I do not believe, just stay in a quorum call.

I ask unanimous consent that the Senate stand in recess until 3 p.m. today.

There being no objection, the Senate, at 1:14 p.m., recessed until 3 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. CONRAD].

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, it is my intention, before the day is out, to call up the reconciliation bill.

Work is going forward on developing the amendment which the leadership will offer. I just believe that we ought to get this bill up today, hopefully get the amendment printed in the RECORD, get some talk out of the way, if we can, and be ready then to take on the bill tomorrow, in the hopes that we can complete action on the bill. This is Wednesday, and we only have 3 days left after today, this week, including Saturday.

We have the CR, the continuing resolution, that is going to come behind the reconciliation bill.

Both matters have to go to conference. Both matters have to go back to both Houses following the conferences. Both matters have to go to the President.

The continuing resolution would have to be extended again if we do not by midnight next Tuesday, the 16th, pass a continuing resolution and have it become law.

So I think that Senators should stay around. It seems to me, as I say, that we ought to at least get started on the bill.

Mr. PRYOR. Mr. President, I wonder if the majority leader would be kind enough to yield.

Mr. BYRD. I am glad to yield.

Mr. PRYOR. Mr. President, most of us in the Senate right now are not involved in some of the negotiations going on, I understand, in several separate parts of the Capitol, relative to the reconciliation measure.

I wonder if the majority leader would be so kind as to sort of educate us, just for a moment, or shed some light on, one, what is going on and, two, what the general problems might be in bringing the legislation to the floor. The leader, I understand, has been involved in some of these meetings.

Mr. BYRD. I have been involved to the extent of trying to get all the parties together. The distinguished Republican leader and I have sat down in the office together today and with the so-called summiteers, the Senators we have both appointed to work with the President's representatives. We have had a meeting today. The staffs are working. There are a couple of areas which need to be ironed out, if we possibly can iron them out.

So Senators have met with representatives from the White House, OMB; staffs are continuing to meet; and I am optimistic that we will be able to iron out those problem areas.

I do not think, in the first place, I would serve any purpose by attempting to say what committee jurisdictions are involved here; and, in the second place, I am not one of those who is familiar enough with the details to, I think, adequately respond to the distinguished Senator's question. But I do think it incumbent upon me to get this process going on the floor as soon as we can do it in a reasonable way and let the Senate work its will, and get the bill to conference.

I apologize for the fact that I have given the Senator a nonanswer. That is what I have done.

THE SENATE SCHEDULE FOR 1988

Mr. PRYOR. Mr. President, before I sit down I should like to take just a moment to thank the majority leader for the schedule that the majority leader and I believe the minority leader announced yesterday for next year's legislative session.

This is going to be a dramatic departure, Mr. President, from what we have practiced in the past. It will be a system whereby, we work Monday through Friday, 5 days, no exceptions,

3 weeks on and then 1 week off, to be back home with our constituents. I believe, Mr. President, this is going to be a good system, and hopefully we can avoid these last-minute rushes that we have seen so many times around this body by extending that work week. I think it will add consistency to the scheduling and consistency to the legislative session.

I applaud the leader for forcing this change through. I think it is very constructive. As I have always said around here, if it does not work, we can try something else. But for 1988, that schedule has been announced, and, speaking as this Senator, I should like to state my gratitude and appreciation.

Mr. BYRD. Mr. President, I thank the distinguished Senator. I will lay that schedule in the RECORD tomorrow.

I thank the Senator not only for his observations, but also for his contributions to this effort.

I think we should be willing to experiment with the schedule. I am not sure that the schedule we have laid out will avoid the last-minute problems that seem to attend our sine die efforts every year. But I do think that the proposed schedule gives Senators some predictability, to schedule their trips back to their constituencies or to catch up on committee work here or other work here.

I know that the Senator will do what he can to help me make this schedule work. It is going to take the combined efforts of all.

The distinguished Senator from Arkansas has put his finger on a problem area—that is, with respect to Mondays and Fridays.

By having 3 weeks in and 1 week out, as a general rule as best we can calendar it, my feeling is that I shall have to have cooperation of all Senators on both sides in getting our work done on Mondays and Fridays if we are going to make the schedule work and still get the people's business done. I know I will have that support from the Senator because he has been one of the leaders here in the effort to develop a schedule that assures quality of work along with some quality of family life around here. And I thank him.

Mr. EXON. Mr. President, will the majority leader yield?

Mr. BYRD. I am happy to yield.

Mr. EXON. I join in my thanks to the majority leader for the schedule change, and I think a great deal of the credit for putting some of the details together goes to my friend from Arkansas who just spoke. I hope it will improve the quality of life for all around here. I am not sure it is going to. I think it may improve the quality of life for most of us.

I suspect in the end it is going to complicate the quality of life for the leader because he is going to have less time then ever before to get things done.

So I suggest let us not be overly optimistic on what this is going to do to our work performances here. I think those are not going to be changed until we change some of the rules and each of us give up some of our individual perks or desires. Otherwise, I can only see that we are going to be meeting what we are meeting right now each and every month, as we go away for a week, and I think that is going to complicate the leader's schedule. I pledge myself as one Member to do whatever he thinks is necessary to make some changes in the rules which nobody in the U.S. Senate now or probably previously knows or understood better than the Senator from West Virginia, our majority leader.

RECONCILIATION

Mr. EXON. On that line, I have heard just now that we are going to delay this further. The majority leader still hopes to get into debate sometime today on a matter before us. I accept the answer to the question of the Senator from Arkansas that the Senator feels it is not good to go into in depth any further on what is holding up the matter now. Therefore, the best information I will get will be in the morning newspaper when I will read in the morning newspapers I think what the details of the holdup are now.

My question is, Since the package has not been put together and is not likely to be from what I understand during the waking hours of this day, what is it that we are going to bring forth and debate on when we are not sure what it is?

Mr. BYRD. I did not say we would have the amendment ready during the waking hours of this day. I expect we will. I intend to go out until about 4 o'clock.

Mr. EXON. The majority leader thinks there is a chance that the things will come together in the next few hours?

Mr. BYRD. Work is being done to that end. Staffs are working. The appropriate Senators have been in on discussions, and I do not think, at this point, that we will not know what the package is until we read the newspapers tomorrow. I feel that we are doing our best and that hopefully before too late today we will be able to offer an amendment to the reconciliation bill.

My inclination is to call up the Senate bill and offer a leadership amendment to it, let the Senate work its will on it, and then in the final juncture call up the House reconciliation bill, substitute the Senate reconciliation language as amended and go to conference.

Mr. EXON. Then if I understand, it is the leader's present intention at least subject to change to move things along. Yet I know that the leader recognizes that with this delay we are getting closer to Christmas and the time pressures are going to increase. It is not the leader's intention to bring forth the bill until there has been a finally agreed to compromise among those who we have sent to the summit?

Mr. BYRD. We hope to offer a leadership amendment. That means that we have to have Senator DOLE and the chairmen and ranking members of certain committees on board on this amendment. I can offer an amendment, but that is not a leadership amendment. It may be an amendment of the leader on this side of the aisle. But we have been talking in terms of having a leadership amendment that represents the work product of those Senators in whom we have placed our confidence on both sides of the aisle, the House Members on both sides of the aisle, and the President's representatives. That is the leadership amendment.

I hope that before the day is over we are able to call up that amendment, Senator DOLE and I jointly, and have it printed in the RECORD and perhaps get a couple hours' debate out of the way, or maybe we will not be able to have much debate today.

I can only say to the distinguished Senator that I am optimistic as I have been from the very beginning, and I believe that before long we can proceed as I have outlined.

On the other matter to which he addressed his remarks, he of course put his finger on the vagus nerve that has a lot to do with ulcers. I have been an old ulcer patient myself several years ago, when in the West Virginia Senate I suffered with an ulcer to the extent that I had to lie down in the committee meetings. I would lie on the couch in committee meetings. And I took Pro-Banthine, gelusil, and you name it, I took it for the ulcer. So, I know something about the vagus nerve, and how it affects ulcers.

But until Senators are able to put aside their own desires—that is, the vagus nerve—for the overall interest of the institution, there is no system around here that is ever going to work to the extent that we would like to see it work. There will always be problems—or parliamentary ulcers—and there will always be Senators who are going to put their own individual conveniences ahead of the conveniences of their colleagues and ahead of the conveniences of the Senate itself. It is just human nature, and that has not changed from the beginning, I guess.

So the Senator has touched upon that vagus nerve which has been a part of man's anatomy from the begin-

ning and it will continue to be a part, and it is that little self-centered side of this quivering piece of humanity that puts itself in the forefront and creates problems. I do not think I have ever, in my 29 years in the Senate, said, "Well, if you don't set the vote at this hour, I will object." I have never done that. But there are Senators here who will do that.

I have set a vote on a matter as recently as last week and after the Senate agreed to the hour for the vote after which I got a note from a Senator saying, "The vote can't be made at this hour; count me against it." So, I had to change the vote to start it a half hour earlier.

I went back and undid the hour previously set, put the request anew, and changed it to suit one Senator.

I frankly would feel a little ashamed to take that attitude, but there are Senators here who feel that strongly from time to time. "If I cannot have my way, we just will not agree to a vote."

That is too bad. And there is no rule that will change it and there is no precedent that will change it. There is no commandment that can be handed down from on high that will change it. It is just plain human nature. And some of us never really grow up. That is about what it amounts to. Some of us are perhaps a little more grown up than others; all children.

That is not said to cast aspersions, but to reflect something that I, frankly, have had to deal with. And it is going to be around, I suppose, as long as the people who presently inherit the Earth wish to be Members of the Senate.

Mr. EXON. May I just comment, I knew that I hit a nerve with the leader when I said that, because I have seen him go through some very painful episodes. And most of us sympathize with him and know that he does an outstanding job of leading the Senate.

Mr. BYRD. The Senator from Nebraska has been very considerate of this leader's problems.

Mr. EXON. I would just like to suggest maybe one small way to do it. I always feel that if there is a bill or if there is an amendment that this Senator from Nebraska feels very strongly about or any of my colleagues, that I have the full right of introducing the bill or the amendment.

I think one place where we might be able to clean up our act a little bit is that if the Senator from Nebraska introduces something that the Senator from Nebraska, and the Senator from Nebraska only, is interested in, that one way to quell that kind of activity on the floor of the U.S. Senate would be not giving the Senator from Nebraska or any of my colleagues similarly situated enough seconds for a rollcall vote.

We have become routine in this place, I suggest to the Senator, of giving sufficient seconds, and most of the time there is not.

Now, I recognize that that delays the Senate and a quorum call probably could be forced to it. But the number of rollcall votes and the number of amendments that are forced to a rollcall vote I think is one of the problems that we have.

I am just making this suggestion that possibly we could begin to enforce the number of Senators present on a required vote to even get a rollcall. That might be helpful in speeding up things a little bit.

Mr. BYRD. Mr. President, this is a matter that will be a problem, has been a problem, always will be a problem. The Constitution says there will be a rollcall vote if one-fifth of the Senators present desire it. We cannot get away from it. It is there in the Constitution.

Ergo, if any Senator wants a rollcall vote around here, he will ultimately get it. If he does not get it at first, he will put in a quorum and he will not let us call off the quorum. So we have to have a live quorum or give him the yeas and nays.

So that is a problem, but it is not one that we will ever be able to resolve. Again, it is within the right of every Senator to ask for a rollcall vote. Once in a while I have seen Senators ask for a rollcall vote and, not getting the support of one-fifth of those present, not press it further.

But, most of the time, they will press on for a vote.

Mr. EXON. Let me inquire for the record, to try and speed things up, at the present time this Senator or any Senator can, by going to the majority leader or the minority leader on that side, put a hold on a bill. One Senator can do that, is that correct?

Mr. BYRD. He can put a hold on it, but this majority leader will recognize that hold only for so long a time. I will not say that, just because a Senator or several Senators put a hold on a bill, I will never call it up. Now, I might not ever call up a given bill, but holds on a bill will not, in and of themselves, necessarily deter me from attempting to call that bill up.

In many instances, Senators put holds on a bill, not to prevent its coming up, but to alert the respective party floor staffs, that they want to be notified before the bill is called up. They may have amendments. They may want to just be notified when it is coming up. So it is not always for the purpose of keeping a bill from coming up.

But holds do not necessarily keep this leader from calling up a bill. I do not know of an instance in which I have not called up a bill simply because there were holds on it. We generally know who has the hold on a bill, what is behind the hold.

Mr. EXON. I would just advise the majority leader, because he knows these things far, far better than I do, but I had an experience 2 or 3 years ago where a bill that I was interested in had a hold placed on it, and I could not find out who—it was from the other side—I could not find out who was placing the hold on it. I pressed and pressed and finally found out who had the hold. I went to that individual and said, "Why are you placing a hold on my bill? Is there something we could work out?"

And I was told very nicely, "I have no objection to your bill at all, Senator EXON, but another Senator who chairs a committee has a hold on one of my bills, and, therefore, I looked up and down the list to see what bills were under his jurisdiction and I found yours. And so I put a hold on the bill reported out of the committee."

I would simply say that maybe these things do not happen every day, but they do happen. And I just say that there are abuses—the one that I have just cited—on holds and at least some holds are put on promiscuously I do not know how many holds I have put on bills. I have asked from time to time to be notified when a matter comes up, but I do not know whether I have put a hold on a bill, per se. But I just say that there are these kinds of things that delay keeping things from coming up, sometimes at the legitimate inconvenience of Senators and other times not.

Mr. BYRD. Well, I thank the distinguished Senator. But we often find that Senators do not themselves put the holds on. Staff sometimes calls up and puts the hold on. And, as the Senator indicated, sometimes we find that a Senator is willing to lift his hold, only to learn that another Senator puts a hold on the bill. There are outside forces that often get into the act. They will contact Senators' offices and say, "How about putting a hold on such-and-such a bill?"

What can really keep a bill from being called up is if there are sufficient known votes against cloture, we pretty much know we are wasting our time.

I think the distinguished Senator from Montana has been most patient and I yield the floor. He has been waiting for recognition.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. I thank the majority leader.

SUCCESSFUL SIGNING OF INF AGREEMENT MEANS BACK TO THE GRIM REALITY OF DOMESTIC PROBLEMS

Mr. MELCHER. Mr. President, as they signed the Intermediate Nuclear Forces [INF] Agreement this week, President Reagan and General Secretary Gorbachev successfully capped the difficult negotiations that led to this first step in United States-Soviet attempts to limit and reduce nuclear armaments. Each of these leaders has his own problems at home—President Reagan with Nicaragua, General Secretary Gorbachev with Afghanistan; President Reagan with the twin towering deficits of treasury and trade, General Secretary Gorbachev with floundering agricultural production and other difficulties with a state-run economy.

Each of the leaders will have to turn his attentions to solving domestic problems. Gorbachev is in the early stages of building his program of glasnost with the people of the Soviet Union; President Reagan is in the waning days of his administration. He needs help. Democrats in the Senate for the most part will help him with the INF Treaty, but we must also try to help him alleviate domestic problems. The problems are of some magnitude because the economy of the United States has been abused, neglected and misled.

Except for the bright spot of the nuclear arms limitation treaty, the Reagan administration finds, in these final countdown months of its tenure, that its poor policies—like chickens coming home to roost—are bogging them down in quagmires of their own making.

Take any of the bright spots the administration has touted as successes: The buildup of our defense capabilities or the declines in the rates of inflation, interest and unemployment. Can any of these be called Reagan administration successes?

True, we have better defense weapons. But the Pentagon, given its head in spending newly appropriated billions, has sunk so much in a multitude of weapons systems that it has had to shirk equal buildup in readiness. That means troop numbers, front-line equipment, munitions, and air transport are limited and those military personnel unfortunate enough to live abroad are clobbered with the declining dollar.

True, inflation came down, despite increased Federal spending. But inflation came down principally because prices for energy and food came down. And inflation can't stay down with our budget deficits so high.

True, interest rates came down for consumers under Federal Reserve Chairman Volcker. But interest rates for agriculture, energy, mining, and other basic industries were only tempered and still are significantly high, and that compounds our problems.

True, unemployment rates dropped as service-related jobs increased. But jobs in the basic industries evaporated as hard times closed down plants, businesses, farms, and communities.

I do not think these are successes when many of our young people wander from State to State seeking jobs that often last no longer than 6 weeks. Or they take a low-paying service job just to survive. Or when legions of older workers who used to have 40-hour-a-week jobs have run out of unemployment benefits and have been unable to find other jobs.

These people constitute merely the tip of the iceberg that chills our economy. Almost 14 percent of our families now live below the poverty level. That means many children are hungry and homeless, that many young people are watching their dreams of a college education evaporate and that many elderly are ending their lives with few comforts because health care costs are outstripping their income and savings.

Millions of people find themselves worse off than when Reagan started his pilgrimage pursuing supply-side economics, aided and abetted by his quest for the holy grail of business deregulation and foreign imports to build foreign investment to finance the ever-increasing fiscal deficits.

It is time we looked at the grim reality of our situation. Under the Reagan administration, this Nation has gone from being the greatest creditor nation to the greatest debtor nation in the history of the world. We were at our zenith in 1981, but within the past 5 years, we have gone from being a $140 billion creditor to a $264 billion debtor. Much of the money we owe in national debt is owed to foreigners. Even the most optimistic economists predict that we will owe foreigners more than $1 trillion as early as 1990.

This is no time for Democrats to crow, however, although we can't follow like sheep. The President does not make a good bellwether. But with the suffering of people, the need for emergency correction of the trade imbalance, the deepening of the public debt and the urgent need to lighten the heavy burden of interest on the debt makes for trying times that must be alleviated the best we can.

Political cooperation, that is constructive political cooperation, is not only necessary, but right, for the times. During the coming months, we can and should ameliorate some of the worst of the Reagan legacy. As Democrats, we can shape the changes that 1988 should bring. Democrats need not point fingers because the public already has fingered the hurts and shortcomings of policies failed and ailments that have not been remedied.

For the President, it is a time to cut his losses. For Congress, it is a time to help him. We would be foolish not to help him if he will let us.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 4:30 P.M.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess until 4:30 p.m. today.

There being no objection, the Senate, at 3:51 p.m., recessed until 4:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. DASCHLE].

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from South Dakota, suggests the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS FOR 30 MINUTES

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate, at 4:47 p.m., recessed until 5:17 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. CONRAD].

Mr. CONRAD. The Chair, in his capacity as a Senator from North Dakota, suggests the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DORINA'S DREAM

Mr. HUMPHREY. Mr. President, in these days when Washington and apparently the country are swept away in "Gorby" fever, as it is put, perhaps it is well to read into the RECORD an editorial which appeared in today's Boston Herald entitled "Dorina's Dream."

The text of the editorial follows:

She is a 21-year-old Jewish woman, and she is alone. Dorina Paritsky, whose family has been struggling for 11 years to leave the U.S.S.R., was allowed to emigrate to Israel in October. Her family was not.

Dorina's dream is to win the release of her family, who want nothing more than the freedom to live as Jews in the world's only Jewish country. Dorina came to Boston to tell her story last week, then traveled to Washington on Dec. 6 with the Massachusetts delegation that took part in the immense demonstration held on behalf of Soviet Jewry.

She is shy, her English is broken, and she struggles for words to convey the anguish only a newly released refusenik with a still-imprisoned family can know. For all that, she expresses herself with an eloquence we cannot improve, and so we want her to tell her own story.

"My parents are refuseniks 11 years, since I was age 10. At first I could not imagine what this means, to be 'in refuse.' I could not understand.

"We are from Kharkov. A big city, but no tourists come there. No reporters. So how can the world know what it is like for Jews there? Soviet government does not allow synagogues or rabbis. They do not allow Jewish schools. But my father always said, 'You must be a Jew. You must learn Jewish history, Jewish religion. You must live in Israel.' Always he tells me and my sister we must live in Israel.

"My father, Aleksandr, is an ocean scientist. My mother, Paulina, is engineer of bridges. My sister Anna is 16. Soviet government says they cannot leave because they know 'state secrets.' They said I cannot leave because of 'state secrets.' Soviet Union has no logic.

"It was terrible when my father was arrested. I was 15½. He was in prison camp in Siberia. My mother went to Siberia to be near him, so my sister and I were alone. Once I visit my father, in 1982. I still have this picture in my mind: Black sky, black ground, black prison camp. Prisoners in black clothes. Many soldiers with dogs and guns.

"I didn't recognize my father. Thin, very thin. No hair. If he ate food, it would not stay in. He was so sick.

"Soviet government says only I can go, not my family. Just to be cruel. But my parents said, 'You must go. Only there can you help us.' So I am here.

"There must be publicity, much publicity. This gives us a great hope and a great joy. You cannot imagine what it is like for Soviet refuseniks to hear of this news, of people in America making demonstration for them. It is a beautiful thing."

Those are the words of a young woman, a Soviet refusenik who finally was permitted to emigrate but only herself, leaving behind her family. It helps put things in perspective, Mr. President.

We all hope that Mr. Gorbachev whose ways and words seem to be something new represents the beginning of something important but at the very best it is only a very, very small beginning, as the experience of this young woman and her family attest and, of course, that family is but one of tens of thousands in like circumstances.

So let us keep that in mind and let us be realistic about the nature of the Soviet system, its ethical basis—or unethical basis, if you will—the absence of the consent of the governed, which makes it so much different in its basis and in its operation from our own Government.

What disturbs this Senator about the goings on in this situation over the last several days, to be generous in the use of terms, is not that the Soviet leader and our leader have met. That is good and it ought to be institutionalized and ought to happen more often.

But what disturbs this Senator is the raising of the Soviet system which has no sound ethical basis to a level of equivalency with our own, the raising of the Soviet dictator, which is what he really is, to a level of equivalency to the elected President of the greatest democracy of the world. They are not equivalent, not in their ethical basis and not in their operations, as the experience of this young woman and her family so well attest.

So let us be objective and realistic about the Soviet Union and Mr. Gorbachev as we digest the events of these last few days and the agreement reached between our two countries.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

OMNIBUS BUDGET RECONCILIATION ACT OF 1987

Mr. BYRD. Mr. President, I ask that the Senate proceed to the consideration of Calendar Order No. 460, S. 1920.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the bill.

The legislative clerk read as follows:

A bill (S. 1920) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1988 (H. Con. Res. 93, One Hundredth Congress),

The Senate proceeded to consider the bill.

Mr. BYRD. Mr. President, I ask unanimous consent that the time on this measure not start running tonight.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, it will be our plan to offer the leadership amendment, ask for its printing, not call it up tonight. No time will run tonight. We will begin work on it tomorrow.

Mr. PACKWOOD. What time tomorrow, Mr. Leader?

Mr. BYRD. Mr. President, in response to the question by the distinguished Senator from Oregon, Mr. PACKWOOD, I shall seek to come in shortly before 9 o'clock so that the Senate can begin on the reconciliation measure at 9 o'clock. The amendment, then, would be called up and then, at the end of the 2 hours on the amendment, it being a first-degree amendment, I anticipate that a rollcall vote will in all likelihood occur.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I wonder if the distinguished majority leader would just engage in a very brief conversation with the Senator from New Mexico. As I understand the distinguished Senator from Florida, the chairman of the Budget Committee, he will shortly send to the desk the so-called leadership amendment, as you have identified it, but we will not offer it tonight nor will we call it up tonight. Our idea is that we will send it to the desk. It is a very big amendment and many times we are asked what is in it and we are taking this opportunity to have it printed so everyone will have the opportunity to have it in the printed form when we start on it tomorrow.

Is that the idea of the Senator from Florida?

Mr. CHILES. I think that is correct. We are also going to try to get a summary printed as well.

Mr. BYRD. Might we get consent that when it is offered in the morning, that consent be given to dispense with the reading of the amendment?

Mr. DOMENICI. I am informed by our side that there are those who want no unanimous consent agreements with reference to the reconciliation package or any amendments. But, Mr. Leader, I think we can get that kind of agreement tomorrow. They just need a little time.

Mr. BYRD. That is fair enough. Fine. We will honor that request.

ORDERS FOR THURSDAY

ORDER FOR RECESS UNTIL 9 A.M. AND FOR CONSIDERATION OF THE RECONCILIATION BILL

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business of the day it stand in recess until the hour of 9 o'clock tomorrow morning and that immediately upon the completion of the prayer of the Chaplain of the Senate resume consideration of the pending Senate bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent to proceed for 5 minutes as in morning business and that Senators may speak during that time.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE DEPARTURE OF RAY ANDERSON BARNHART AS ADMINISTRATOR OF THE FEDERAL HIGHWAY ADMINISTRATION

Mr. THURMOND. Mr. President, on December 31, 1987, Ray A. Barnhart, the 10th Administrator of the Federal Highway Administration [FHWA], will leave his post as Administrator. Although his colleagues and friends will sorely miss him, I am confident that the fine leadership he has displayed as Administrator will be remembered and revered in the years ahead.

Mr. Barnhart is a native of Elgin, IL. He received his undergraduate degree in fine arts from Marietta College in Marietta, OH, and his masters degree from the University of Houston in Houston, TX. Mr. Barnhart has resided in Texas for most of the last 30 years.

Prior to coming to Washington, Ray Barnhart served as city councilman, State legislator and chairman of the Texas Republican Party, where he played an important role in the election of Bill Clements, the first Republican Governor in Texas in more than 100 years. In 1979, he was appointed to serve as one of the three members of the Texas Highway Commission. It was during his tenure as Texas Highway Commissioner that Mr. Barnhart gained the reputation as a capable and dedicated highway administrator.

In January 1981, President Reagan appointed Ray Barnhart as the Administrator of the Federal Highway Administration. Mr. Barnhart has proved himself to be an extraordinary Administrator during his 7-year tenure, the longest of any previous Administrator.

Utilizing his strong leadership abilities, Mr. Barnhart played a key role in the passage of the Surface Transportation Assistance Act of 1982 which raised much-needed gasoline tax revenues for the first time in nearly 23 years. The 5-cent increase in the gasoline tax helped fund needed improvements to the Nation's highway and bridge programs.

Other major accomplishments of Mr. Barnhart include cracking down on organized crime in the highway construction business, establishing 42 technology transfer centers at colleges and universities to improve the work product of local highway employees, and initiating the Strategic Highway Research Program.

Ray Barnhart is a true patriot and a man of action. He has served his Government to the fullest, giving not only his time and talents as an Administrator, but also giving the future leadership of FHWA a solid foundation upon which to build.

I am pleased to publicly commend Ray A. Barnhart for his outstanding leadership and accomplishments as Federal Highway Administrator, and I wish him well in his future endeavors.

THE DEATH OF FORMER CONGRESSMAN EUGENE SILER

Mr. McCONNELL. Mr. President, I rise today to pay tribute to a good friend of mine, former Congressman Eugene Siler, Sr. Mr. Siler was a unique individual who, in his service to Kentucky, developed a reputation as a man of unquestioned integrity and unparalleled dedication to public service.

Before serving as a Representative in Kentucky's old Eighth Congressional District from 1954-64, he served on the Kentucky Court of Appeals, which at that time was the highest court in the State.

After receiving his undergraduate and law degrees from the University of Kentucky, he practiced in an unconventional manner—he refused to take cases that involved alcohol or divorce. This reflected his staunch Baptist upbringing in southeastern Kentucky that led him to be the moderator of the General Association of Baptists in Kentucky, the highest honor that the denomination bestows upon laymen. That background motivated him to add Biblical quotations to his speeches and to oppose the use of profanity and cigarettes. He even tithed his salary to his church and charities.

Although Mr. Siler served in the Navy during World War I and as an Army captain in World War II, he was an early opponent of American involvement in Vietnam and was one of three Members of Congress to oppose President Eisenhower's "fight if necessary" policy for the defense of Formosa. Such independent thinking was also demonstrated when, even though a fiscal conservative, he would moderate his views on Federal spending because of the economic problems that faced his district.

Another friend of mine, Nelda Barton, a vice chairman of the Republican National Committee, said Mr. Siler "* * * was one of the most genuine, patriotic, and spriritual individuals I've ever known." I share Ms. Barton's sentiments and join with many of my fellow Kentuckians in grieving in the passing of this extraordinary individual.

Mr. President, I would like to enter into the RECORD an editorial from today's Lexington (KY) Herald-Leader that is indicative of how highly this fine man was thought of by his fellow citizens. We can all be inspired by its account of Eugene Siler's distinguished career.

EUGENE SILER SR., POLITICAL ORIGINAL

Eugene Siler Sr. followed in nobody's footsteps through life. The trail he chose to blaze was straight and narrow.

Siler, who died Saturday, was the original "Clean Gene" of politics. He hewed to the tenets of an honorable upbringing and the Baptist Church, to which he was steadfastly devoted.

During his 10 years as a Kentucky congressman, there was never a whisper of wrongdoing. In his political career, as in his life, Siler consistently followed the dictates of his conscience.

He was against fellow Republican Dwight Eisenhower's policy of "fight if necessary" to defend Formosa. In 1964, he said—as a way of making a point—that he was a candidate for president. His sole promise was that if elected, he would immediately order American troops home from Vietnam, and then turn the office over to the vice president.

"I promised the mothers of my district that I would cast no vote calculated to send their sons to foreign lands to fight another war in which we have no business as I see it," he said at one point. "I have kept faith with those mothers."

Straight talk by a man who himself had served in two wars—as a Navy enlisted man in World I and as an Army captain in World War II.

The Williamsburg resident was ahead of many people in the matter of education. As an unsuccessful Republican candidate for governor in 1951, his platform said: "If Kentucky does not make progress in public education, it will, of course, be nothing but a lost marble in the rank crabgrass of backwardness." Time has proved him right, much to the state's sorrow and disgrace.

Siler was unbending on his personal rules. He did not, for instance, take cases in his Williamsburg law practice that involved alcohol or divorce. He was, obviously staunchly against alcohol, and he was also against the use of tobacco and profanity. He made no secret about where he stood on matters and no excuses for standing there.

Looking at some of today's political practices, it seems almost unreal that such a man could have held office. But his record stands, and it will for years to come.

THE LITERACY CORPS IS CATCHING ON

Mr. KENNEDY. Mr. President, earlier this year, I introduced a bill to establish a National Literacy Corps. Under this legislation, S. 1016, Federal assistance would be available over 2 years for grants to colleges to establish academic courses encouraging students to tutor in community agencies. This program is worthwhile because it can stimulate a larger increase in literacy tutoring for a Federal investment which is a fraction of the value of the services. It also provides a meaningful opportunity for young people to serve their community and country in a way that is practical, given the competing demands of academics, jobs, and other activities.

S. 1016 is now pending in conference with the House as part of H.R. 3, the omnibus trade legislation, with an authorization of $20 million over 2 years.

In the meantime, several colleges in Massachusetts have established literacy corps programs on their campuses with the help of corporate support obtained by the programs' creator, Norman Manasa, and the Washington education project. The program is also continuing its operations in New York City, where it began a year ago. Evaluations from all programs are very enthusiastic. It is obvious that the idea is catching on. It has great potential, and I am hopeful that our legislation will move forward quickly.

I ask unanimous consent that the text of the Senate-passed authorizing language and a series of recent articles on the program may be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TITLE X—LITERACY ASSISTANCE

PART A—LITERACY CORPS ASSISTANCE

SHORT TITLE

SEC. 1001. This part may be cited as the "Literacy Corps Assistance Act of 1987".

PURPOSE

SEC. 1002. It is the purpose of this part to provide financial assistance to institutions of higher education to promote the development of literacy corps programs to be operated by institutions of higher education in public community agencies in the communities in which such institutions are located.

LITERACY CORPS PROGRAM

SEC. 1003. From the amount appropriated pursuant to section 1007 for any fiscal year, the Secretary is authorized, in accordance with the provisions of this part, to make grants to institutions of higher education for not to exceed 2 years to carry out literacy corps programs.

USES OF FUNDS

SEC. 1004. (a) IN GENERAL.—Funds made available under this part may be used for—

(1) grants to institutions of higher education for—

(A) the costs of participation of institutions of higher education in the literacy corps program for which assistance is sought; and

(B) stipends for student coordinators engaged in the literacy corps program for which assistance is sought; and

(2) technical assistance, collection and dissemination of information, and evaluation in accordance with section 1006.

(b) LIMITATIONS.—(1) No grant under this part to an institution of higher education may exceed $50,000.

(2) No institution of higher education may expend more than $25,000 of a grant made under this part in the first year in which the institution receives such a grant.

APPLICATIONS

SEC. 1005. (a) APPLICATION REQUIRED.—Each institution of higher education desiring to receive a grant under this part, shall submit an application to the Secretary, at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(b) CONTENTS OF APPLICATION.—Each such application shall—

(1) contain assurances that the institution will use the grant in accordance with section 1004;

(2) contain adequate assurances that—

(A) the institution has established one or more courses of instruction for academic credit which are designed to combine the training of undergraduate students in various academic departments such as social sciences, economics, and education with experience as tutors,

(B) such individuals will be required, as a condition of receiving credit in such course, to perform not less than six hours of voluntary, uncompensated service each week of the academic term in a public community agency as a tutor in such agency's educational or literacy program; and

(C) such tutoring service will be furnished under the supervision of qualified personnel; and

(3) demonstrate that the institution of higher education has participated, prior to applying for a grant under this part, in community service activities, including—

(A) the use of a portion of its allotment under part C of title IV of the Higher Education Act of 1965 for work study for community service learning under section 433(b)(2)(A); or

(B) the conduct of a cooperative education program; and

(4) contain such other assurances as the Secretary may reasonably require.

(c) WAIVER.—The Secretary may, upon request of an institution of higher education which does not meet the requirements of clause (3) of subsection (b), grant a waiver of the requirement under such clause if the institution of higher education provides assurances that—

(1)(A) the institution of higher education has conducted another significant program which involves community outreach and service; or

(B) its failure to engage in community service related programs or activities prior to making application under this part will not impede the ability of the institution to engage in the outreach efforts necessary to carry out the requirements of this part; and

(2) the institution will use a portion of its allotment under part C of title IV of the Higher Education Act of 1965 for community service learning programs pursuant to section 443(b)(2)(A) of that Act if the institution receives an allotment under such part C.

An institution of higher education may apply for a waiver as part of the application described in subsection (b).

TECHNICAL ASSISTANCE AND COORDINATION CONTRACT

SEC. 1006. To the extent that funds are available therefor pursuant to section 1007, the Secretary may, directly or by way of grant, contract, or other arrangement—

(1) provide technical assistance to grant recipients under this part;

(2) collect and disseminate information with respect to programs assisted under this part; and

(3) evaluate such programs and issue reports on the results of such evaluations.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1007. There are authorized to be appropriated to carry out the provisions of this part $10,000,000 for fiscal year 1988, and $10,000,000 for any fiscal year thereafter, subject to section 1051, except that no funds are authorized to be appropriated for this part for more than 2 fiscal years.

DEFINITIONS

SEC. 1008. For the purpose of this part—

(1) the term "public community agency" means an established community agency with an established program of instruction such as elementary and secondary schools, Head Start centers, prisons, agencies serving youth, and agencies serving the handicapped, including disabled veterans.

(2) the term "institution of higher education" has the same meaning given that term by section 1201(a) of the Higher Education Act of 1965; and

(3) the term "Secretary" means the Secretary of Education.

[From the Boston Globe, Apr. 23, 1987]

BILL WOULD SLATE $27.5 FOR LITERACY PROJECT

(By John Robinson)

WASHINGTON.—A pilot literacy project slated to begin in Boston and New York next fall received a boost in Congress yesterday with the introduction of a bill to make the project national with $27.5 million in federal start-up money.

Declaring that "illiteracy is a national disgrace," Sen. Edward M. Kennedy staged a hearing on the subject, and took testimony from former Chief Justice Warren Burger and Norman Manasa, director of the Washington Education Project Inc.

Burger, now chairman of the Bicentennial Commission, linked literacy to democracy and lamented that a larger percentage of citizens could read, write, and digest the Constitution in 1787 than can do so today.

"It is imperative in a democratic society that there be no substantial number of people who are not literate," Burger said.

Manasa, whose interest in literacy began in 1969 when he devised a tutorial program using undergraduates from his school, the University of Miami, urged a tutorial program "on a massive scale".

"The nation is moving with considerable speed into the 'technological age', into a new era where robots and computers will do most of the work that traditionally has been done by the human hand, with the result that vast numbers of semiliterate workers will not be simply unemployed, they will be unemployable, and for a lifetime," Manasa predicted.

"Literacy is no longer a corporate good. It's now essential to corporate profitability," he added.

Under the bill introduced by Kennedy and patterned after the privately-endowed projects run by Manasa's organization, Congress would fund a Literacy Corps for two years.

An estimated 1,000 colleges would be offered grants to establish a 3-credit course under faculty supervision featuring off-campus tutoring by students at elementary schools, prisons and community centers.

Manasa said the object of the literacy project was to provide "realistic education for college students," and to aid those who cannot read effectively.

Seven colleges in Boston, four in New York, and one in Los Angeles have expressed interest in Manasa's project, he said, and three of the colleges in Boston appear ready to commit themselves to starting the project next fall.

The seven Boston schools that have expressed interest are Northeastern, Framing-

ham State, Bunker Hill Community, Endicott, Boston College, Leslie and Clark.

[From the Las Vegas Review-Journal, May 29, 1987]

PROGRAM WOULD HELP EASE LITERACY CRISIS

Reading and writing are not only as old as civilization itself; the arts of reading and writing are indeed part of what defines civilization.

Indeed, wherever civilization arose in the ancient world, there too arose the art of reading and writing. Written records have been discovered in northern Babylonia that date back more than 5,000 years.

Today, as civilization crests in an age of global communications and startling advances in mankind's knowledge about himself and the world, there are few activities that do not require some level of literacy. Think of the difficulty one would have shopping or driving, much less attempting to understand the significance of, say, events in the Middle East if one were barred, through illiteracy, from the written word.

Illiteracy in the underdeveloped world is to be lamented. But widespread illiteracy in the heartland of a superpower is inexcusable.

And yet, consider this excerpt from a report from the U.S. Senate Labor and Human Resources Committee:

"According to one estimate, 23 million (American) citizens over the age of 18 cannot read the poison warning on a can of pesticide or a package of cigarettes, the headlines of a daily newspaper or a letter from their child's teacher.

"An additional 35 million are semi-literate, reading so poorly that they barely function at a survival level. That makes 58 million adults, roughly a third of the nation's population over 18, whom our system of education has failed in their adolescent years and who are functionally illiterate today."

The Senate report also cites this disturbing fact: The United States, the most powerful and the freest nation the world has ever known, now ranks 49th in literacy among the 159 countries of the world.

Not only does illiteracy cost this country billions of dollars every year in lost productivity, welfare and unemployment payments, industrial accidents and stymied lives of drugs and crime, it also represents a threat to the very constitutional system that is the foundation of this free nation. People ignorant of the system that allows freedom to flourish cannot be relied upon to recognize threats to it or to defend it, much less to help it blossom in any significant way.

We are not often in agreement with Sen. Ted Kennedy, the liberal Massachusetts Democrat. But Kennedy has devised a worthy plan to address the grave problem of illiteracy in the United States.

The Kennedy plan is a variation of the Peace Corps idea, brainchild of Kennedy's older brother.

What Kennedy proposes is a Literacy Corps, a program that will enable college students to volunteer for a few hours a week as assistant teachers for students in nearby public schools or other community institutions in exchange for college credit. The Kennedy proposal—the Literacy Corps Assistance Act—would provide start-up grants to colleges to establish special academic courses in which students tutor the illiterate in reading, writing and mathematics.

The students would tutor in such places as schools, Head Start centers, juvenile delinquent centers, prisons, adult literacy centers and in agencies for the handicapped and emotionally disturbed.

The Kennedy proposal carries a start-up price tag of $27 million—a modest amount, given the magnitude of the problem. Our people in Washington should support the Literacy Corps.

The United States must rise to this challenge presented by the crisis in literacy. Otherwise, it had better be willing to accept a long, slow decline, slouching toward third-rate nationhood.

[From the New York Times, July 2, 1987]

AMERICA NEEDS A LITERACY CORPS

(By Warren E. Burger and Edward M. Kennedy)

WASHINGTON.—America prides itself on being an "advanced" nation, but its level of illiteracy mocks the term. At international gatherings, President Reagan, in common with most 20th century American Presidents, represents the country with the poorest literacy record of all the industrialized nations.

The answer is at hand. Congress is considering a new strategy in the battle against illiteracy—a Literacy Corps, in which college students would work part-time as tutors in schools and community agencies as part of a special college course.

Vast numbers of citizens lack basic reading skills. According to the best available estimate, 29 million adults—one in every six people over 18 years of age—cannot read the warning on a can of pesticide and a pack of cigarettes, a newspaper headline, a letter from their child's teacher and baseball box scores.

As President Reagan has said, "The hidden problem of adult illiteracy holds back too many of our citizens, and as a nation, we, too, pay a price." He is absolutely right. And the price will go higher. Illiteracy costs the nation heavily in reduced international competitiveness, increased poverty, higher welfare and unemployment benefits, lesser skills in the armed forces, industrial accidents, lost productivity and dead-end lives of crime and drugs.

It is also an insidious threat to our constitutional democracy, as larger and larger numbers of citizens find themselves unable to participate in the system and may become susceptible to demagoguery.

America has never addressed this problem effectively. The Government spends only a relatively small amount—$106 million this year—to fight illiteracy, and the assistance reaches only about 4 percent of those who need help.

The National Advisory Council on Adult Education estimates that we would need to spend 50 times as much—$5 billion—to make a significant impact on the problem through traditional funding programs.

New spending of that magnitude is out of the question because of the Federal deficit. The challenge is to do more without spending more. That is a tall order, but not impossible. This is where a Literacy Corps comes in.

Successful projects at two colleges suggest that such a corps is an idea waiting to happen. The first was developed in 1969 at the University of Miami by Norman Manasa, who was a student there and who now heads the Washington Education Project in the District of Columbia. In 1986, he encouraged St. John's University in Queens, N.Y., to establish a similar program.

It began last January with 12 students and has been well received in schools in Flushing, N.Y. Jeffrey Ratner, principal of Edward Hart elementary School wrote in April: "The benefit of this kind of individualized help is enormous . . . dramatic improvement has been shown by many youngsters in the program."

The St. John's students at his school volunteered to continue their tutoring for more than a month past the end of their college year. Other St. John's students have been tutoring in country family court, a homeless shelter and a class for hyperactive children at a local parochial school.

The results of these pilot efforts almost two decades apart are so compelling that the time has come for a national effort.

Legislation pending in Congress would provide $20 million to launch Literacy Corps projects at hundreds of colleges and universities. It would provide start-up grants of $25,000 per institution to cover initial costs, mainly faculty salaries.

Participating student teachers would enroll in semester-long elective courses at their colleges comparable to those in clinical legal education at law schools. They would be instructed in relevant disciplines and assigned as tutors in schools and other locations, as well as Head Start centers, institutions for the disabled, adult education programs, jails and other facilities.

In a typical semester, each student would provide 60 hours of tutoring. If 800 of our 3,300 colleges participated, it is likely that about 130,000 under-graduates would enroll in the courses and generate nearly eight million hours of tutoring over a two-year period. Valued at $20 an hour, this instruction would be worth $160 million in tutorial services, an eightfold return on the Federal investment.

A Literacy Corps might be the closest thing to a free lunch that Congress will ever see. It could be as free as voting—and it would give us better voters and citizens.

No one should underestimate the benefits that will accrue to people who are taught to read, who will become employable in an increasingly technological economy, who will be able to take care of themselves and their families and contribute to the nation's future economic strength.

In addition to reversing the trend toward illiteracy, a Literacy Corps would harness the idealism, enthusiasm and social commitment of young Americans.

A Literacy Corps is not only affordable but has the potential for the 1980's that President John F. Kennedy's Peace Corps had in the 1960's.

As we both have observed on college campuses in the recent graduation season, young Americans in this supposedly "me" generation are as ready, willing and eager to respond to the challenge of serving the community as their parents were a generation ago. But someone has to ask—and point the way. Colleges and universities can do so—by adopting a Literacy Corps-type program as part of their curriculums.

[From the New York Times, July 21, 1987]

KENNEDY PROCLAIMS BIRTH OF "LITERACY CORPS"

BOSTON.—College students in Boston will teach children and adults to read as part of a privately financed program announced today by Senator Edward M. Kennedy, who called it the beginning of a "national literacy corps."

Mr. Kennedy has sponsored legislation to underwrite similar tutoring programs at 1,000 colleges and universities. Evoking memories of his brother, John F. Kennedy, the Massachusetts Senator said at a news conference today that he envisioned the tutoring programs as a "modern-day Peace Corps."

President Kennedy founded the Peace Corps in 1961 when he called on America's young people to teach such basic skills as construction and farming in developing countries.

A Washington-based nonprofit group, the Washington Education Project, will administer the Boston tutoring program, which will be financed by private contributions.

PLANS FOR TUTORING COURSES

Grants to colleges to cover administrative costs will enable them to offer students elective courses in tutoring. College students who choose to enroll in tutoring courses will give private reading lessons in prisons, schools, adult literacy centers and agencies for handicapped and emotionally disturbed children.

Each participating college will receive a $25,000 grant over two years to cover the administrative costs of the program and to pay the salaries of faculty and student supervisors.

The Bank of Boston announced today that it was donating five $5,000 grants to the Washington Education Project to help finance tutoring programs at five Boston-area colleges. The bank said it hoped other businesses and groups would also provide grants. To date, only Stonehill College and Endicott College have signed contracts agreeing to begin the literacy program in the fall, but Boston College, Bunker Hill Community College and Wheaton College are likely to join the program by the fall, said Norman Manasa, the director of the project.

Students who sign up for the semester-long courses in tutoring will spend a minimum of 60 hours teaching reading skills to illiterate adults and children.

"If a thousand colleges participate, 165,000 students would join the literacy corps and 10 million hours of tutoring would be generated over two years," Mr. Kennedy said in a statement at a Senate Committee hearing. "Valued at $20 an hour, the $27.5 million Federal investment in the program would generate $200 million worth of tutoring services, over a sevenfold return."

Mr. Manasa said his group was raising money so it could offer grants to any school in the country that wanted to set up a tutoring course. Last year, the organization awarded its first grant to St. John's University in Queens, where the tutoring program was offered in the spring term. Twelve student enrolled.

Jeffrey Ratner, principle of P.S. 21 in Flushing, Queens, which was host to a St. John's tutor, called the arrangement "ideal." Mr. Kennedy said 23 million Americans could not read headlines or warnings on cigarette packages and 35 million others could barely function. He added that Federal, state, and local programs now reached only 4 percent of the illiterate population.

"The American populace is less literate today than it was 200 years ago when we ratified the Constitution," he Kennedy said.

[From the Los Angeles Herald Examiner, July 26, 1987]

SHARING THE GIFT OF LITERACY

If Congress agrees, as it should, to establish Sen. Ted Kennedy's national "Literacy Corps" to teach millions of illiterate Americans to read, Norman Manasa deserves the credit. Everything but the name is his idea.

When Manasa was a junior at the University of Miami in 1968, he saw two converging needs. In inner-city schools, migrant camps, orphanages, prisons there were people needing individual attention to improve their academic skills. At the university were students that Manasa figured could use a dose of the real world to flesh out the abstractions they were learning in the classroom.

So he put together a unique program that gave college students in sociology, economics and educational psychology credit for tutoring. The project was an immediate and stunning success. Ultimately, more than 1,000 students participated.

Manasa's approach is even more important now than then. Basic educational skills, particularly reading, are essential to get a job in an increasingly technological society.

For the past 10 years, at the helm of the non-profit Washington Education Project, he has worked to expand his innovative tutoring concept to every college campus in the nation. Progress has been slow, but more colleges are coming on board.

Corporate donations provide two-year, $25,000 grants for administrative costs to each college involved in the program. Tutors, who receive course credit but no pay, spend 60 hours a semester teaching children and illiterate adults how to read.

If even 5 percent of the nation's 10 million college students were to join in a literacy program, they would provide 30 million hours of free tutoring each semester.

Although Manasa is having somewhat better luck these days in attracting corporate support, Kennedy's legislation would provide $20 million for grants, enough to get the Literacy Corps started at 800 colleges. Unfortunately, his proposal is attached to an untenable Senate trade bill. It ought to be reintroduced so it can be passed on its own merits.

[From the Los Angeles Times, July 27, 1987]

AN ATTACK ON ILLITERACY

It has been more than 20 years since we were told why Johnny can't read. Despite the ensuing years of classroom emphasis on reading skills, the U.S. Department of Education now estimates that national illiteracy increases by 1.5 million people each year. For these Americans, the reason why they cannot read no longer matters.

The ability to read and write—sometimes as little as one's own name—has traditionally determined whether or not a person is literate. But the world has changed. Warning labels, sales contracts and even the occasional traffic ticket demand an ability not only to read but also to understand and appropriately respond. For millions of Americans this task is impossible. Unable to function independently in today's complex society, they are considered to be "functionally" illiterate.

The number of functionally illiterate adults in the United States is not really known. Estimates vary from 17 million to 75 million, depending on the breadth of the definition. What is known is that more than 50% of the nation's prison inmates are not able to read newspaper headlines or understand written instructions. And last year 40% of the armed services' enlistees were found to read below the ninth-grade level.

The cost of illiteracy is as impossible to estimate as the problem itself, but it is enormous. While some people succeed despite a lifetime struggle with reading disabilities, most do not. Experts say that illiteracy is responsible for many industrial accidents, higher welfare and unemployment benefits, increased poverty, crime and drug use and loses in international trade.

Sen. Edward M. Kennedy (D-Mass.) has introduced legislation that would be a promising and inexpensive solution to the illiteracy problem. He calls it the Literacy Corps. The program would utilize one of the nation's best resources, the university student. For a one-time cost of $20 million, about 800 universities and colleges across the nation would be able to start programs in which their students, under professional supervision, would each provide 60 hours of reading instruction at local schools, adult-education programs, community groups and prisons. In return for their work, the students would receive college credit for the elective program.

This is an innovative and cost-effective project that deserves congressional support. The Literacy Corps, along with other literacy programs, makes up the Senate's Education for Competitive America Act (S. 406). Unfortunately, this measure has now been attached to the Senate's controversial trade bill. As currently written, this protectionist trade bill has little chance of surviving a presidential veto.

The Senate should reconsider the Education for Competitive America Act on its own. This is an appropriate vehicle for congressional action on the nation's escalating illiteracy problem. The Literacy Corps would offer to thousands, perhaps millions, of non-readers an opportunity to participate in today's world at today's standard. The rewards would be great, the cost so low.

[From the Boston Globe, Nov. 17, 1987]

KENNEDY'S "LITERACY CORPS" IDEA ADVANCES

WASHINGTON CONFEREES OK TUTORIAL PROGRAM

(By Mary Kate Cranston)

WASHINGTON.—House and Senate conferees have agreed on a national program to fight illiteracy that would encourage college students to tutor adults and children in exchange for academic credit.

The measure, part of a trade bill under negotiation, would set aside $20 million to be spent over two years as start-up grants for hundreds of colleges and universities.

A public announcement about the program is expected later this month. Committee staff confirmed details of the effort.

Sen. Edward Kennedy, chief sponsor of the project, which he calls a "literacy corps," said in a statement the project would generate 10 million hours of tutoring in reading and mathematics.

"A problem as enormous as this has tremendous costs to the nation in terms of public welfare expenditures, unemployment benefits, crime and even prison maintenance," the Massachusetts Democrat said. "And it also has large human costs in terms of blighted lives."

Kennedy said he is enthusiastic about the program because not only would it teach people how to read, but it would also involve students in public service.

However, an Education Department official said that while the department is not opposed to the proposal, it is concerned that students may not be mature enough to commit themselves to a long-term program and may consider the course as an easy way to earn college credits.

Twenty-three million Americans are too poorly educated to read the poison warning on a can of pesticide, a letter from their child's teacher, newspaper headlines or the first amendment of the US Constitution, according to Kennedy's office.

Under the program, modeled after privately-endowed projects run by Norman Manasa, director of the Washington Education Project, students would be required to tutor six hours each week of a typical 10-week semester, check in with a teacher on a daily basis and submit a final report to the faculty supervisor at the end of the semester.

Manasa said the three-credit course only permits undergraduates to work in established community agencies that have instructional programs in place.

"Nobody has the right to make grand promises to people trying to learn how to become more learned and then disappear," Manasa said in an interview. "That is harmful and dangerous and not what our program is about."

In Boston, Bunker Hill Community College, Endicott College, Boston College and Stonehill College started the program this fall, along with St. John's University in New York City.

("A problem as enormous as this has tremendous costs to the nation in terms of public welfare expenditures, unemployment benefits, crime and even prison maintenance."—Sen. Edward Kennedy.)

[From the Harvard Crimson, Nov. 18, 1987]

BILL FOSTERS TEACHING ILLITERATES

(By Jonathan S. Cohn)

In an attempt to foster literacy programs nationwide, Sen. Edward M. Kennedy '54 has sponsored a bill in Congress to give students college credit for participating in community tutoring programs.

The bill would provide $20 million to help about 800 public and private institutions around the nation establish student-taught literacy courses.

Though the legislation is still in committee, House and Senate members are "very close" to agreement, Paul M. Donovan, press secretary for the Senate Labor and Human Resources Committee, said yesterday.

Students participating in the program would take a 10-week elective course which includes spending about six hours a week tutoring reading and/or math throughout the semester, Donovan said.

Harvard has several existing literacy programs into which the proposed program could be incorporated, said Professor of Education Jeanne S. Chall, chairman of the Advisory Committee on the Harvard Illiteracy Initiative.

"As long as you have sufficient training and proper supervision, I think it is a very good idea for those who are helped and those who help. It could be made part of [our programs], although ours are more broad-based," Chall said.

But the proposed program is not without its pitfalls, Harvard literacy experts say. "Teaching the illiterate is not an amateurish thing," Chall said, adding, "Tutors have to be taught and taught well."

The program could probably have only limited use, said John Strucker '66, a reading teacher at the Community Learning Center. Strucker said most illiterate people would benefit more from professional teaching than from the good will of and that the time allotted was not sufficient to teach literacy.

But other educators said that they thought the program would work.

The Washington Education Project, a private, non-profit organization on which Kennedy based his program is proof of the bill's feasibility, said Norman Manasa, who created the program. "I think the evidence shows that undergraduates are superior tutors, provided they work under a teaching professional, as they would in this project," he said.

At a recent meeting of the Senate Labor and Human Resources committee, Kennedy said he introduced the bill because "young Americans in this generation are ready, willing and eager to respond to the challenge of public service."

While several area colleges—including Boston College, Bunker Hill Community College, Endicott College and Stonehill College—already offer students credit for literacy tutoring, Harvard does not.

Paul C. Thissen '89, acting co-chairman of PBHA's Project Literacy, said that the bill would at least increase support for the PBHA volunteer program. Thissen said, "It would certainly raise the level of awareness and could lead us to some new programs."

[From the Christian Science Monitor, Nov. 23, 1987]

LITERACY PROGRAM TAPS COLLEGE STUDENTS AS TUTORS

(By Catherine Foster)

BOSTON.—Norman Manasa has kept a dream alive since he was an undergraduate in 1968. And it's just now starting to come true.

The dream? "To transfer economic power to the illiterate poor." The way to do that, he figured, was to give them something that no one could ever take away: the ability to read, write, and do math. Who could give it to them? College students, who had not only the skills but also the untapped desire to share.

So he developed a program in which undergrads would tutor children and adults—and get college credit.

Now, almost 20 years later, the idea is starting to come to fruition. His tutoring program is on six campuses and receiving high-level corporate funding. And if legislation sponsored by Sen. Edward M. Kennedy (D) of Massachusetts passes, the program could be federally underwritten on a much larger scale.

If only a small percentage of the nation's undergraduates spent six hours a week tutoring, Mr. Manasa says, a wave of tutors could be released. That, he says, could start making a dent in the huge number of Americans who are illiterate.

In September, Stonehill College, Endicott College, Boston College, and Bunker Hill Community College, all in the Boston area, offered a tutoring course as a elective. St. John's University in Queens, N.Y., was the first, last year, and, has since expanded the program to another campus.

The United States Department of Education estimates that 27 million adult Americans are "functionally illiterate"—can't read printed instructions, newspapers, bus schedules, etc.

The hidden costs of illiteracy are extraordinarily high, according to Jonathan Kozol, who wrote "Illiterate America": more than $120 billion a year for such things as industrial accidents and welfare payments, and more than $100 billion in lower gross national product. Other, higher, calculations add in the cost of crime and poverty.

And with the US moving into an increasingly technological era, those who can't read might be more than unemployed; they might be unemployable. Manasa's Literacy Corps joins a host of state and private literacy programs run by churches and community groups. PBS and ABC have run literacy campaigns. And there's a movement afoot to get newspapers to start their own.

Manasa started working on the tutoring for-credit idea as a student at the University of Miami. Over a period of four years, 1,000 undergraduates who signed up got three credits for tutoring in prisons, inner-city schools, and Head Start centers. They also met in weekly seminars with supervising professors.

He came to Washington 10 years ago to generate interest in the project on a national scale and formed a nonprofit corporation, the Washington Education Project. Then-Chief Justice Warren E. Burger, Manasa's former boss, got interested. While he was chairman of the Commission on the Bicentennial of the Constitution. Mr. Burger had Manasa speak to the commission about the program. Senator Kennedy heard him and suggested he call his staff.

"This program taps the idealism and potential of young people," Mr. Kennedy says. "It encourages them to pitch in in their communities. And its great success as a pilot program makes me think it could work on a nationwide basis.

Manasa has already gained corporate funding for his vision: the New York Daily News, the Xerox Foundation, Manufacturers Hanover Trust Company, Hughes Aircraft Company, Primerica, the Los Angles Times, and the Bank of Boston.

"Nothing could be more important to the future of this country than the education of our young and reeducation of others who never got the chance," says Ken Rossano, director of development at Bank of Boston. "That's why you'll see more and more companies willing to take part."

Kennedy's bill authorizes $20 million to be divided up into $25,000 grants that would go to 800 colleges that applied for them. The colleges would receive the funds in four payments over two years. The money would be for administrative and supervisory purposes, minimizing the risk to the university until there's enough demand for the class to be incorporated into the regular degree program. Then the costs would be absorbed by student tuition.

Acknowledging that 1960s altruism won't go far in the tight-fisted '80s, Manasa's program is as no-frills as an L. L. Bean boot. His enthusiasm, however, is not.

"We'd do this only in agencies that exist and that have teaching programs in place," he said in a phone interview. "There would be no storefronts, no capital investment. We'd just pump in tutors, use the books already in the classroom that have been paid for by taxpayers. Consequently, there's virtually no money involved."

To avoid upsetting teachers who might view tutors as interlopers, the plan lets teachers choose whether they want tutors and decide which students will be tutored. The tutors maintain a consistent schedule of six hours a week, allowing the teachers to plan around them.

"I wanted the [college] kids not sitting in class and getting only theory but to be able to move between the two worlds of theory and experience. As you can imagine, putting students in ghetto schools would give them a hard dose of reality," says Manasa. He

adds that the students also get job experience for the future.

And something more intangible: "It would teach the old virtues of duty, obligation, and compassion," he says. "They can't be learned as theoretical exercises, but only by taking up the responsibility of welfare for another individual."

Ann Saffi, a student at St. John's University, took part in its program last spring. She tutored in a second-grade class as one of her four internships in social work., "It started out as a simple tutoring job, but developed into much more of a relationship," she says. "I was only supposed to go until the beginning of May, but stayed until the end of their term."

Donna Petrie, who is the course instructor for the St. John's program, says the tutored students gain more than just reading skills.

"You take 10- to 12-year-olds already in trouble with courts. They don't trust anybody but their own kind. A kind of bonding takes place. It gives them another chance, because somebody believes in them."

One criticism of the program is that it doesn't provide much training; students start tutoring from the first week of class, but do meet with a faculty adviser weekly. Karl Haigler, director of the federal Department of Education's adult literacy initiative, reserves judgment on this fledgling program but says, "Teaching an adult how to read is not an easy proposition. It takes more than a year to get someone reading at low level to advance a grade. To what extent are students, and adults, able to commit to that?"

Other literacy experts say the money might be better used to support the already established network of literacy programs. "My personal view would be to provide more funding for the $106 million national Adult Education Act [which supports adult literacy programs] rather than re-create a whole new support system," says Jinx Crouch, of the Literacy Volunteers of America.

The Literacy Corps leaves the structure of the course "up to whoever's running it," says the Rev. Eugene Green at Stonehill College, in North Easton, Mass. There, the tutoring is part of the writing program: "Writing, Literacy, and Power," and the course, says Fr. Green, "provides a theoretical reflection on the experience students are having at the site. The method is learned on site."

But one literacy expert, who asked not to be named, said, "The bill makes the problem of adult literacy seem simple to solve when it is a multifaceted social, economic, psychological, and educational issue."

[From the Boston Herald, Nov. 27, 1987]

CURING ILLITERACY

Sen. Edward Kennedy's new "literacy corps" is such an obvious solution to our country's illiteracy problem that it's a wonder it hasn't been thought of before.

Some 23 million Americans, one of every 10, are unable to read the most basic things: newspaper headlines, labels on cans, signs, notices, even warnings. Varied and continued efforts by private organizations over the years have helped some of these people some of the time. But millions of Americans have remained unhelped.

Kennedy's plan, part of a trade bill still under negotation, would change this by making the skills and abilities of the country's college students available to every child and adult who wants to read but cannot.

Under the program, college students would sign up for a tutoring class, much as they would any other class, tutor six hours a week and receive college credits for their work. Students would also be required to report to a supervising teacher and submit a summary of work accomplished at the end of each college semester.

The proposal, which is already being tried in a few local colleges, would require the expenditure of $20 million over the next two years, money that would be dispersed among hundreds of colleges and universities.

The most intriguing aspect of this program is its practicality. It makes the best of a plentiful national resource: bright, educated, enthusiastic students.

Kennedy said the project will generate 10 million hours of tutoring in reading and mathematics. These are needed, functional hours which can only help ease a hidden problem that has been growing for years.

[From the Harvard Crimson, Dec. 1, 1987]

UNDERGRADS TEACH LITERACY—DONATIONS FROM HARVARD ALUMNI BRING PROGRAM TO BOSTON

(By Jonathan S. Cohn)

A sociologist's dream of college students receiving credit for teaching the illiterate has been realized at four Boston-area schools, thanks largely to the financial support of some local Harvard alumni.

The literacy programs which began this fall are the result of educator and sociologist Norman Manasa's Washington Education Project (WEP), a private non-profit organization which uses grants from corporations to fund student-taught literacy programs.

"The project is working to develop programs at colleges across the country that will register undergraduates in 3-credit elective courses and send them into community agencies to teach reading and mathematics to the illiterate poor," said Manasa, who founded and now directs WEP.

Manasa has been at the forefront of the strategy of involving undergraduates in teaching the estimated 23 million Americans who are functionally illiterate. And the practice seems to be catching on.

Sen. Edward M. Kennedy '54 (D-Mass.) introduced a bill in March modeled after WEP that would give federal money to student taught literacy programs.

This year, a $25,000 "challenge grant" from the Bank of Boston enabled Boston College, Bunker Hill Community College, Endicott College, and Stonehill College to offer such courses.

Bank of Boston Director of Development Kenneth R. Rossano '56 said that he helped secure the grant because he thought the project could be a "very powerful program."

"There's no part of the country that could be more enthusisatic about or better for the program than the Greater Boston area, with all its colleges and students." Rossano said. "The undergraduates could make a huge difference."

The Boston law firm of Goodwin, Procter and Hoar was another countributor. Robert B. Fraser '49, chairman of the firm's executive committee said that the company's $5,000 "challenge grant" was part of their general commitment to Boston education.

"The partners of this firm set up an endowment fund of $1,000,000 for early education in Boston schools." Fraser said "The [Washington Education] project sounded like a very good idea and we were eager to be a part of it."

So far, local project directors say, the literacy programs have been very successful.

"We have several programs under the guidelines of WEP, and the people here are very enthusiastic about them," said Diana C. Pullin, Dean of Boston College's School of Education.

The programs in Boston are part of WEP's nation-wide campaign. Manasa, who founded the first such program at the University of Miami in 1969, said that student-taught programs could be "the answer to the nation's massive illiteracy problem."

"The courses are inexpensive to operate," Manasa said "Since the tutoring is done by the undergraduates as part of a college course, they are reliable, profoundly effective, and absolutely free."

However, some literacy theorists are skeptical that undergraduates can effectively teach people to read.

"It's like saying we can cure all the people who have cancer with medical aides and not doctors." Professor of Education Jeanne S. Chall said earlier this month.

Chall is chairman of the Advisory Committee of the Harvard Illiteracy Initiative, which was unveiled by President Bok this fall. The program will fund research into the best literacy teaching methods and train students at the school to teach illiterates.

BICENTENNIAL MINUTE

DECEMBER 9, 1858: STEPHEN DOUGLAS REMOVED AS COMMITTEE CHAIRMAN

Mr. DOLE. Mr. President, 129 years ago today, on December 9, 1858, the Senate Democratic caucus removed Stephen Douglas as chairman of the Committee on Territories. Only twice in the history of this institution has a Senator been summarily stripped of his chairmanship—the other being Charles Sumner, as chairman of the Foreign Relations Committee.

Stephen Douglas stood among the most powerful and influential Senators during the decade before the Civil War. In 1850, after Henry Clay had failed, Douglas had forged the compromise that saved the Union. Four years later, in an effort to organize the Kansas-Nebraska territory, Douglas had attempted to solve the vexing issue of slavery in the territories by promoting popular sovereignty, that is, by letting the settlers vote to decide whether their territories would admit or prohibit slavery. It was the public explosion that followed the Kansas-Nebraska bill that led directly to the formation of the Republican Party.

In 1857 the Democratic Douglas found himself at odds with the Democratic administration of James Buchanan. He believed that Buchanan's support of proslavery factions in Kansas was undermining his concept of popular sovereignty. His break with Buchanan alienated him from Southern Democrats, at the same time that he was under assault from the new Republicans. In 1858, Abraham Lincoln challenged Douglas for his Senate seat. When he narrowly defeated Lincoln, Douglas returned to the Senate to find that the Buchanan wing of the Democratic caucus had stripped him of his chairmanship.

A hard man to keep down, Stephen Douglas rallied from those adversities to win the Democratic nomination for President in 1860, only to lose the election to his old rival, Abraham Lincoln.

TWENTIETH ANNIVERSARY OF THE LOS ANGELES FREE CLINIC

Mr. CRANSTON. Mr. President, 20 years ago on December 17, 1967, a handful of dedicated individuals joined together because they were committed to the idea that "quality health care is a right, not a privilege." These volunteers gathered what resources they had among themselves, moved into a small storefront on Fairfax Avenue in Los Angeles, and began providing free medical services to the disadvantaged members of their community. And thus was the Los Angeles Free Clinic born.

Today, the Los Angeles Free Clinic remains committed to making quality health care available to those who have no place else to turn. During the past two decades, the clinic has provided over 800,000 people with medical and dental care and psychological counseling. Eleven years ago, they introduced the Los Angeles Sex Information Helpline, a special phone-only service that helps anyone who calls with advice about human sexuality, family planning, and related matters. Clearly, in the face of the AIDS epidemic we are now witnessing in this country, such a service was never needed more.

Although known primarily for its medical services, the Los Angeles Free Clinic has long recognized that you can't treat patients successfully unless you deal with the broader set of circumstances that have made them ill. Along with its established legal services department, the clinic's newest department, adolescent services, puts this theory into practice every day. A volunteer staff of 450 are the heart, soul, and backbone of the clinic's service, according to Executive Director Gary Bess. Volunteers include physicians, nurses, dentists, dental assistants, laboratory technicians, pharmacists, social workers, attorneys, therapists, and lay persons who help with administrative work. Through contributions of time and talent from each volunteer, the clinic is able to provide services for less than 15 percent of the cost of other health agencies and hospitals. In 1986 alone, Free Clinic volunteers contributed over $4 million in professional services.

The Los Angeles Free Clinic looks forward to a future when it can treat every person who comes to them for help at the moment they need it. Mr. President, nothing pleases me more than to congratulate the Los Angeles Free Clinic, the oldest and largest free clinic in the United States, for 20 years of dedication and service to the people of Los Angeles.

HUGH H. JACOBS DAY

Mr. HEFLIN. Mr. President, November 20, 1987, was a great day for the citizens of both the city of Mobile and Mobile County. It was a day in which they honored one of their own beloved sons of Mobile—Hugh H. Jacobs—by proclaiming that day as "Hugh H. Jacobs Day." Hugh Jacobs has served the city and county of Mobile, my home State of Alabama, and our Nation in an outstanding capacity for many, many years.

I was delighted to see such deserved recognition and such a tremendous outpouring of gratitude on Hugh's behalf. A wonderful luncheon was held for Hugh and, from what I understand, the attendance list read like a "Who's Who List" of Mobile. While I was kept in Washington on that day by the business of the Senate, my thoughts were with Hugh Jacobs as he was honored by his many friends, by his community and by his family.

Hugh Jacobs has long been a devoted servant of the public good. He has always risen to every call of duty from his community, devoting himself, his time, and his every resource to countless causes and efforts. However, perhaps his efforts are best known in the area of law enforcement. During the tenure of Gov. James E. Folsom, Hugh was appointed as chief of police of the Alabama State docks. After his dedicated service with the State docks, he opened a security business that has served the community of Mobile for many years. In addition to the distinction he earned in the community of Mobile, Hugh was recognized throughout the State, and served as the president of the Alabama Peace Officers' Association.

In addition to his service in law enforcement, Hugh also served our Nation in the Armed Forces. He has been an active veteran, working through the years on behalf of those who fulfilled their duty in the Armed Forces, and has served as commander of the American Legion.

Additionally, Hugh Jacobs has for over 30 years been a member of the Mobile County Democratic Executive Committee. In this capacity, he has contributed greatly to the success of our democracy, and to the vital representation in government of the citizens of Mobile.

Mr. President, I have not even begun to describe the countless contributions and achievements Hugh Jacobs has offered to his community and to my State. It would be impossible to discover all that he has made possible—let alone make a list of his many efforts and achievements. Yet, it is a pleasure for me to describe the valuable friendship and gracious manner, the public responsibility and civic duty, and the wonderful, warm personality that Hugh Jacobs possesses and offers to all. I value his friendship and am thankful for all that he has done for America, for Alabama, and for Mobile.

In closing, I wish Hugh and his family all the blessings and happiness the world has to offer. There is an old Irish prayer that I would like to paraphrase which, I believe, summarizes the feelings of all of Hugh's many friends throughout Mobile and my State:

May the road rise to meet you.
May the wind always be at your back.
May the Sun shine warm on your face.
And may the rains fall soft on your shoulders,
And may the good Lord hold you in the hollow of his hand during all of your days.

Finally, it is not often that an individual is so honored as Hugh Jacobs has been by his friends and his community. Therefore, I ask unanimous consent that the attached resolutions and letters that were presented to Hugh at his luncheon be printed in the CONGRESSIONAL RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

RESOLUTION

Whereas, Hugh H. Jacobs is a long time resident of Mobile, Alabama and has distinguished himself in a successful career in Law Enforcement, the Security Industry, and community service; and

Whereas, he has served as Past Commander of the American Legion, McLeod Post No. 3; and

Whereas, he has served as Past President of the Alabama Peace Officers' Association; and

Whereas, he is the former Chief of Police of the Alabama State Docks; and

Whereas, he has been a member for many years of the Mobile County Democratic Executive Committee; and

Whereas, he has been active in Veterans and Law Enforcement organizations; Now therefore be it

Resolved, the Mobile County Commission does hereby join the entire "Community", and pay tribute and honor to this outstanding citizen, and declare this as "Hugh H. Jacobs Day" in sincere heartfelt appreciation of his past service and to honor this outstanding citizen and wish him a long and successful future.

PROCLAMATION

Whereas, Hugh H. Jacobs has devoted much of his time toward the betterment of our community throughout the years by serving the citizens of Mobile in various civic and law enforcement organizations; and

Whereas, his interest has been shown through his participation and leadership as Commander of the American Legion McLeod Post 3; as past-President of the Sheriff's and Police Officers Association; and as a member of the Mobile County Democratic Executive Committee for 30 years; as Chief of Police at the Alabama State Docks; and

Whereas, when called upon by family and friends in time of crisis, Hugh has never hesitated to give freely of his time and services to lend a helping hand:

Now, therefore, I, Mayor Arthur R. Outlaw, on behalf of the City of Mobile, do hereby proclaim November 20, 1987 "Hugh H. Jacobs Appreciation Day" in recognition of the many years of service to the citizens of Mobile and as a expression of thanks for the many times he has helped when called upon to answer the needs of our citizens.

HONORARY LIEUTENANT GOVERNOR

To all who shall see these presents greeting: Know ye, That I, Jim Folson, Jr., reposing full trust in your Prudence, Integrity and Ability do, by virtue of the Power and Authority vested in me as Lieutenant Governor of the State of Alabama, hereby commission Hugh Jacobs as a Honorary Lieutenant Governor.

To have and to hold the said office, together with all the Rights, Powers and Emoluments to the same belonging or in any way Lawfully appertaining, during the term prescribed by the Constitution and Laws of the State of Alabama.

In Testimony Whereof, I have hereunto set my hand and caused the Great Seal of State to affixed at the Capitol in the City of Montgomery this 16th day of November in the year of our Lord 1987.

ACHIEVEMENT AWARD PRESENTED TO HUGH JACOBS

For your continued Community Service and years of dedication to law enforcement, The City of Prichard wishes to express its appreciation.

TELEGRAM

MONTGOMERY, AL, *November 19, 1987.*

HUGH JACOBS,

Care Sheriff Tom Purvis,

Tiny Diny Restaurant, Mobile AL.

Congratulations Hugh on the great friends you behold. Wish I could be there among them today. Its been written that friends are those rare people who ask how we are and then wait to hear the answer. Well these are the folks that are with you today. You know Dizzy Dean said: "It ain't braggin if you really done it." So enjoy the praises cause praise does wonders for the sense of hearing. Remember you can't turn back the clock but you can wind it up again. Lets go for another 32 ounce steak. Good health and happiness.

BOBBY TIMMONS.

MESSAGES FROM THE HOUSE

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

At 12:03 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolutions:

H.R. 2672. An act to amend title 38, United States Code, to modify the amount of the Veterans' Administration home loan guaranty and to make other improvements in the loan guaranty program, and for other purposes;

H.R. 3483. An act to amend title 18, United States Code, to improve certain provisions relating to imposition and collection of criminal fines, and for other purposes;

H.J. Res. 199. Joint resolution designating April 1988 as "Actors' Fund of America Appreciation Month"; and

H.J. Res. 412. Joint resolution to congratulate King Bhumibol Adulyadej of Thailand, on his 60th birthday on December 5, 1987.

The enrolled bills and joint resolutions were subsequently signed by the acting President pro tempore (Mr. SHELBY).

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2204. A communication from the Acting Secretary of Agriculture, transmitting a draft of proposed legislation to amend the Volunteers in the National Forests Act of 1972 to permit volunteers to be considered employees under 31 U.S.C. 3721; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2205. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, a report on a violation of statute prohibiting the obligation or expenditure of funds in excess of amounts available in an appropriation or fund or in advance of an appropriation; to the Committee on Appropriations.

EC-2206. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, a report on a violation of statute involving the overobligation of an approved appropriation; to the Committee on Appropriations.

EC-2207. A communication from the Acting Secretary of the Navy, transmitting, pursuant to law, a report on the proposed transfer of the obsolete submarine ex-*Blenny* to the State of Maryland; to the Committee on Armed Services.

EC-2208. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant to law, notice that the Department of the Air Force intends to exercise authority for exclusion of the clause concerning examination of records by the Comptroller General; to the Committee on Armed Services.

EC-2209. A communication from the Principal Deputy Assistant Secretary of Defense (Comptroller), transmitting, pursuant to law, a supplemental contract award report for the period November 1 to December 31, 1987; to the Committee on Armed Services.

EC-2210. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant, pursuant to law, notice that the Department of the Navy intends to exercise the authority for exclusion of the clause concerning examination of records by the Comptroller General; to the Committee on Armed Services.

EC-2211. A communication from the Assistant Secretary of Defense (Legislative Affairs), transmitting, pursuant to law, a report entitled "The Soviet Space Challenge"; to the Committee on Armed Services.

EC-2212. A communication from the Assistant Secretary of the Army (Installations and Logistics), transmitting, pursuant to law, a report on the recent discovery and disposal of a suspected chemical artillery projectile at the Dugway Proving Ground, UT; to the Committee on Armed Services.

EC-2213. A communication from the Assistant Secretary of the Army (Installations and Logistics), transmitting, pursuant to law, notification of the recent discovery and disposal of a suspected chemical mortar projectile at the Edgewood area of Aberdeen Proving Ground, MD; to the Committee on Armed Services.

EC-2214. A communication from the Chairman of the Federal Deposit Insurance Corporation, transmitting, pursuant to law, the fifth annual report of the net worth certificate purchased under title II of the Garn-St Germain Depository Institutions Act; to the Committee on Banking, Housing, and Urban Affairs.

EC-2215. A communication from the acting general counsel of the Department of the Treasury, transmitting a draft of proposed legislation to amend the Federal Financing Bank Act of 1973 to facilitate the sale of loan assets; to the Committee on Banking, Housing, and Urban Affairs.

EC-2216. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, a report on the proposed transfer of certain funds within NASA pursuant to the annual Authorization Act; to the Committee on Commerce, Science, and Transportation.

EC-2217. A communication from the Secretary of Agriculture, transmitting, pursuant to law, the annual report on the 1986 Youth Conservation Corps Program; to the Committee on Energy and Natural Resources.

EC-2218. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of overpayment of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-2219. A communication from the acting general counsel of the Department of Energy, transmitting a draft of proposed legislation to amend the Uranium Mill Tailings Radiation Control Act of 1978; to the Committee on Energy and Natural Resources.

EC-2220. A communication from the Acting Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, the annual report containing a list of projects which have been authorized but for which no funds have been obligated during the preceeding 10 full fiscal years; to the Committee on Environment and Public Works.

EC-2221. A communication from the Acting Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report on the boundary delineation and fencing practices study conducted at Corps of Engineers civil works projects; to the Committee on Environment and Public Works.

EC-2222. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on sole community hospitals; to the Committee on Finance.

EC-2223. A communication from the Deputy Secretary of Transportation, transmitting, pursuant to law, the annual report of the Office of Inspector General, Department of Transportation for the period ending September 30, 1987; to the Committee on Governmental Affairs.

EC-2224. A communication from the Vice President (Human Resources) of the Farm Credit Services, transmitting, pursuant to

law, the annual report for calendar year 1986 for the 12th district farm credit retirement plan and thrift plan; to the Committee on Governmental Affairs.

EC-2225. A communication from the District of Columbia auditor, transmitting, pursuant to law, a report entitled "Review of Funds Appropriated For Official Expenses"; to the Committee on Governmental Affairs.

EC-2226. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, notice of approval of the final plan for the PACER SHARE demonstration project at McClellan Air Force Base; to the Committee on Governmental Affairs.

EC-2227. A communication from the actuaries and consultants to the Sacramento Farm Credit Employees Retirement Plan, transmitting, pursuant to law, the annual report on the plan for calendar year 1986; to the Committee on Governmental Affairs.

EC-2228. A communication from the Director of the U.S. Information Agency, transmitting, pursuant to law, the semiannual report of the inspector general, U.S. Information Agency, for the period April 1 to September 30, 1987; to the Committee on Governmental Affairs.

EC-2229. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of Initiative Measure No. 25 (D.C. Act 7-102), certified by the Council on November 17, 1987; to the Committee on Governmental Affairs.

EC-2230. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report of surplus real property transferred in fiscal year 1987 for public health purposes; to the Committee on Governmental Affairs.

EC-2231. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Department of Housing and Urban Development, for the period April 1 to September 30, 1987; to the Committee on Governmental Affairs.

EC-2232. A communication from the Commissioner of the Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, a report on the adjustment of the status of certain aliens under section 13(c) of the Immigration and Nationality Act; to the Committee on the Judiciary.

EC-2233. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations for the Paul Douglas Teacher Scholarship Program; to the Committee on Labor and Human Resources.

EC-2234. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations for the State Student Incentive Grant Program; to the Committee on Labor and Human Resources.

EC-2235. A communication from the Secretary of Agriculture, transmitting, pursuant to law, notification of the intention to interchange jurisdiction of lands in connection with the Libby Dam and Lake Koocanusa project, Lincoln County, MT, Kootenai National Forest, and Forest Service acquired lands within the Kootenai National Forest; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2236. A communication from the Comptroller General, transmitting, pursuant to law, a report on 13 deferrals relative to the President's impoundment message for fiscal year 1988 and the impoundment Control Act of 1974; pursuant to the order of January 30, 1975, as amended on April 4, 1986, referred jointly to the Committee on Agriculture, Nutrition, and Forestry, Committee on Appropriations, Committee on Armed Services, Committee on the Budget, Committee on Foreign Relations, Committee on Labor and Human Resources.

EC-2237. A communication from the general counsel, Department of Defense, transmitting, a report on the views on the Department of Defense on section 308 of H.R. 2714, 100th Congress, to the legislative branch appropriations bill for fiscal year 1988; to the Committee on Appropriations.

EC-2238. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a report of building project survey for Baton Rouge, LA; to the Committee on Environment and Public Works.

EC-2239. A communication from the Chairman, U.S. Nuclear Regulatory Commission, transmitting, a draft of proposed legislation to amend section 29 of the Atomic Energy Act of 1954, as amended; to the Committee on Environment and Public Works.

EC-2240. A communication from the Acting Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to the Water Resources Development Act of 1986; to the Committee on Environment and Public Works.

EC-2241. A communication from the Acting Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report on the status of hydroelectric power studies relative to certain Army Corps of Engineers projects; to the Committee on Environment and Public Works.

EC-2242. A communication from the Assistant Secretary (Legislative Affairs), Department of State, transmitting, pursuant to law, a report on the death of Enrique Camarena; to the Committee on Foreign Relations.

EC-2243. A communication from the Secretary of State, transmitting, pursuant to law, a report relative to Soviet Union obligations to United States diplomats; to the Committee on Foreign Relations.

EC-2244. A communication from the President of the United States, transmitting, pursuant to law, a report on Soviet noncompliance with arms control agreements; to the Committee on Foreign Relations.

EC-2245. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-104, adopted by the Council on November 11, 1987; to the Committee on Governmental Affairs.

EC-2246. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-111, adopted by the Council on November 10, 1987; to the Committee on Governmental Affairs.

EC-2247. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-112, adopted by the Council on November 10, 1987; to the Committee on Governmental Affairs.

EC-2248. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-113, adopted by the Council on November 10, 1987; to the Committee on Governmental Affairs.

EC-2249. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-114, adopted by the Council on November 10, 1987; to the Committee on Governmental Affairs.

EC-2250. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-110, adopted by the Council on November 10, 1987; to the Committee on Governmental Affairs.

EC-2251. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-106, adopted by the Council on November 10, 1987; to the Committee on Governmental Affairs.

EC-2252. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-107, adopted by the Council on November 10, 1987; to the Committee on Governmental Affairs.

EC-2253. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-103, adopted by the Council on November 10, 1987; to the Committee on Governmental Affairs.

EC-2254. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-105, adopted by the Council on November 10, 1987; to the Committee on Governmental Affairs.

EC-2255. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-115, adopted by the Council on November 24, 1987; to the Committee on Governmental Affairs.

EC-2256. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-108, adopted by the Council on November 10, 1987; to the Committee on Governmental Affairs.

EC-2257. A communication from the Administrator; General Services Administration, transmitting, pursuant to law, the General Services Administration's Office of the Inspector General Report to Congress; to the Committee on Governmental Affairs.

EC-2258. A communication from the Administrator, Veterans Administration, transmitting, pursuant to law, the Semiannual report of the Inspector General of the Veterans Administration; to the Committee on Governmental Affairs.

EC-2259. A communication from the Administrator, NASA, transmitting, pursuant to law, the semiannual report of the inspector General of NASA; to the Committee on Governmental Affairs.

EC-2260. A communication from the Executive Director, D.C. Retirement Board, transmitting, pursuant to law, the personal financial disclosure statement for Board member Orlando W. Darden; to the Committee on Governmentl Affairs.

EC-2261. A communication from the Assistant Attorney General (Office of Legislative Affairs), Department of Justice, transmitting, pursuant to law, a draft of proposed legislation to authorize within the Department of Justice the establishment of a Senior Executive Service for the Federal Bureau of Investigation and the Drug Enforcement Administration; to the Committee on Governmental Affairs.

EC-2262. A communication from the Deputy Secretary of Labor, transimitting, pursuant to law, the semiannual report of the Department's inspector general; to the Committee on Governmental Affairs.

EC-2263. A communication from the chief immigration judge, Department of Justice, transmitting, pursuant to law, a report of facts and pertinent provisions of the law as relative to certain aliens whose deportation has been suspended; to the Committee on the Judiciary.

EC-2264. A communication from the Secretary of Education, transmitting, pursuant to law, a copy of the document transmitted to the Federal Register for schedule publication entitled "Final Regulations for Student Assistance General Provisions;" to the Committee on Labor and Human Resoures.

EC-2265. A communication from the Secretary of Education, transmitting, pursuant to law, a copy of the document transmitted to the Federal Register for publication entitled "Final Regulations for the Perkins Loan Program;" to the Committee on Labor and Human Resources.

EC-2266. A communication from the Secretary of Education, transmitting, pursuant to law, a copy of the document transmitted to the Federal Register for publication entitled "Final Regulations for the Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs;" to the Committee on Labor and Human Resources.

EC-2267. A communication from the Secretary of Education, transmitting, pursuant to law, a copy of the document transmitted to the Federal Register for publication entitled "Notice of Final Annual Funding Priority—Postsecondary Education Program for Handicapped Persons—Demonstration Projects;" to the Committee on Labor and Human Resources.

EC-2268. A communication from the Administrator, Veterans Administration, transmitting, pursuant to law, a report on the "Sharing of Medical Resources Program of the Veterans Administration for Fiscal Year 1987;" to the Committee on Veterans Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute and an amendment to the title:

H.R. 1612: A bill to authorize appropriations under the Earthworks Hazards Reduction Act of 1977 for fiscal years 1988 and 1989 (Rept. No. 100-239).

By Mr. BYRD (for Mr. BURDICK), from the Committee on Environment and Public Works, with an amendment in the nature of a substitute and an amendment to the title:

S. 675: A bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1988, 1989, 1990, 1991, and 1992 (Rept. No. 100-240).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 858: A bill to establish the title of States in certain abandoned shipwrecks, and for other purposes (Rept. No. 100-241).

S. 892: A bill to remove the right of reversion to the United States in lands owned by the Shriners' Hospitals for Crippled Children on lands formerly owned by the United States in Salt Lake County, UT (Rept. No. 100-242).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, without amendment:

S. 963: A bill to amend the boundaries of Stones River National Battlefield, Tennessee, and for other purposes (Rept. No. 100-243).

S. 1165: A bill to authorize the Secretary of the Interior to provide for the development and operation of a visitor and environmental education center in the Pinelands National Reserve, in the State of New Jersey (Rept. No. 100-244).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

S. 1335: A bill to establish the city of Rocks National Reserve in the State of Idaho, and for other purposes (Rept. No. 100-245).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 1675: A bill to provide for the establishment of the Hagerman Fossil Beds National Monument in the State of Idaho, and for other purposes (Rept. No. 100-246).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

H.R. 1983: A bill authorizing the Secretary of the Interior to preserve certain wetlands and historic and prehistoric sites in the St. Johns River Valley, FL, and for other purposes (Rept. No. 100-247).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, without amendment:

H.R. 2121: A bill to authorize and direct the National Park Service to assist the State of Georgia in relocating a highway affecting the Chickamauga and Chattanooga National Military Park in Georgia (Rept. No. 100-248).

H.R. 2325: A bill to authorize the acceptance of a donation of land for addition to Big Bend National Park, in the State of Texas (Rept. No. 100-249).

H.R. 2416: A bill to establish the Jimmy Carter National Historic Site and Preservation District in the State of Georgia, and for other purposes (Rept. No. 100-250).

H.R. 2566: A bill to amend the National Parks and Recreation Act of 1978, as amended, to extend the term of the Delta Region Preservation Commission, and for other purposes (Rept. No. 100-251).

By Mr. KENNEDY, from the Committee on Labor and Human Resources, without amendment and with a preamble:

H. Con. Res. 97: A concurrent resolution to encourage State and local governments and local educational agencies to provide high quality daily physical education programs for all children in kindergarten through grade 12.

S. Con. Res. 43: A concurrent resolution to encourage State and local governments and local educational agencies to provide quality daily physical education programs for all children from kindergarten through grade 12.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources:

Ann Dore McLaughlin, of the District of Columbia, to be Secretary of Labor;

The following-named persons to be Members of the National Commission on Libraries and Information Science for the terms indicated:

For the remainder of the term expiring July 19, 1991: Raymond J. Petersen, of Connecticut, vice Kenneth Y. Tomlinson, resigned.

For terms expiring July 19, 1992:

Sally Jo Vasicko, of Indiana, vice John E. Juergensmeyer, term expired.

Julia Li Wu, of California (Reappointment).

Beverly Fisher White, of Florida, to be a Member of the National Museum Services Board for a term expiring December 6, 1990;

Joshua M. Javits, of the District of Columbia, to be a Member of the National Mediation Board for the term expired July 1, 1989;

The following-named persons to be Members of the Board of Directors of the United States Institute of Peace for terms expiring January 19, 1991:

William R. Kintner, of Pennsylvania (reappointment).

Morris I. Liebman, of Illinois (reappointment).

Sidney Lovett, of Connecticut (reappointment).

Richard John Neuhaus, of New York (reappointment).

Elspeth Davies Rostow, of Texas (new position).

W. Bruce Weinrod, of the District of Columbia (reappointment).

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HOLLINGS:

S. 1935. A bill to amend the Communications Act of 1934 to provide for the assessment and collection of a fee on the transfer of spectrum licenses and the establishment of a trust fund for public broadcasting; to the Committee on Commerce, Science, and Transportation.

By Mr. METZENBAUM:

S. 1936. A bill to designate the General Mail Facility of the United States Postal Service in Cleveland, Ohio, as the "John O. Holly Station of the United States Postal Service"; to the Committee on Governmental Affairs.

By Mr. BYRD (for Mr. BENTSEN (for himself, Mr. DOLE, Mr. MOYNIHAN, Mr. ARMSTRONG, Mr. COHEN, Mr. KERRY, Mr. HEINZ, Mr. BOSCHWITZ, Mr. LEVIN, Mr. RIEGLE, Mr. DECONCINI, Mr. DOMENICI, Mr. BYRD, and Mr. WILSON)):

S. 1937. A bill to amend title II of the Social Security Act to continue disability benefits during an appeal; considered and passed.

By Mr. JOHNSTON (for himself and Mr. MCCLURE):

S.J. Res. 231. A joint resolution to authorize the entry into force of the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes; to the Committee on Energy and Natural Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HOLLINGS:

S. 1935. A bill to amend the Communications Act of 1934 to provide for the assessment and collection of a fee on the transfer of spectrum licenses and the establishment of a trust fund for public broadcasting; referred to the Committee on Commerce, Science, and Transportation.

THE COMMUNICATIONS TRANSFER FEE ACT

● Mr. HOLLINGS. Mr. President, today I am introducing legislation to capture for the American public the value of one of the most important assets of the United States—the radio spectrum. This bill also provides for stable, long-term funding for one of our most important public services—public broadcasting. Finally, this bill corrects a grave mistake of this Federal Communications Commission and reinstitutes the 40-year-old fairness doctrine.

It is long past the time that we collect the value of the public resource known as the radio spectrum. For too long, the public airwaves—worth about $500 billion—have been given away virtually for free. The President recognized this fact, and he included a spectrum fee to capture this value in his fiscal year 1988 budget. The Congress recognized this fact, and it included a spectrum fee in its fiscal year 1988 budget resolution. The Commerce Committee recognized this fact, and it reported out a spectrum fee to comply with the budget resolution. My legislation follows the same path.

The Communications Transfer Fee Act of 1987 imposes a fee for use of the public radio spectrum at the time the license is transferred. With asset values of these spectrum licenses increasing so greatly, this is no more than a minor burden. This legislation applies to virtually all users of the airwaves, including cellular radio, paging, business radio, and broadcasting. Only Government users and public safety users are exempted. Finally, by imposing this user fee, we will reduce the deficit every year by almost $300 million.

This legislation also provides long-term funding for an important public service—public broadcasting. Anyone who has followed the 20-year history of funding for public broadcasting knows that it has been at best highly uncertain. The current administration has made no secret of the fact that it wants to end funding for public broadcasting. At every turn, it has sought to reduce, rescind, or eliminate it. The most recent authorization legislation by Senator Goldwater was vetoed twice by the President. In fact, the only way we have been able to fund public broadcasting in the past decade was to include it in reconciliation legislation. In an atmosphere of such uncertainty, how can public broadcasters fulfill the statutory goals that we had mandated? Congress has created such high expectations but then provides little support. It is time we stopped cheering and started doing something to set this situation right.

That is why this legislation creates an independent trust fund for public broadcasting. With the long-term stability that this provides, public broadcasters will have the opportunity to reach the high goals we have set.

The final provision of this legislation is the codification of the Fairness Doctrine. Earlier this year, both the Senate and the House passed by a substantial margin legislation to accomplish this goal, but it was vetoed by the President. Because of the importance of the fairness doctrine to ensuring that the American public gets complete information in a balanced fashion, we must persist in our efforts to codify it. I can assure everyone I will use every opportunity, including here, to do so.

The approach taken by this bill is fair and balanced. It provides for deficit reduction annually by capturing some of the value of the Nation's airwaves, a resource that belongs to all of us. It provides the necessary funding for public broadcasting, a service that over one-half the American public tune in each week. It provides for the codification of the fairness doctrine. These are sound ideas that deserve all our support.●

By Mr. METZENBAUM:

S. 1936. A bill to designate the general mail facility of the U.S. Postal Service in Cleveland, OH, as the "John O. Holly Station of the United States Postal Service"; to the Committee on Governmental Affairs.

JOHN O. HOLLY STATION OF THE U.S. POSTAL SERVICE

● Mr. METZENBAUM. Mr. President, I am today introducing legislation to rename the U.S. Postal Service building located at 2400 Orange Avenue in Cleveland, OH, the "John O. Holly Station of the United States Postal Service."

It is with great pride that I introduce this bill in recognition of one of Cleveland's greatest citizens, and in tribute to a truly great champion and pioneer in the realm of civil rights.

With his founding of the Future Outlook League in 1935, John O. Holly began a crusade for equal employment opportunities and social justice that would provide a model for the later civil rights leaders of the sixties. John O. Holly pioneered the use of economic weapons—consumer boycotts, and orderly picketing—to force social and economic change for blacks in Cleveland.

In 1935, almost 80 percent of black Americans were unemployed. Fifteen precent of those who were lucky enough to be employed were stuck in menial jobs. Minority businesses numbered less than 50 out of a black population of 80,000 in Cleveland.

Although more than 3,000 businesses were located in central Cleveland, less than 100 of these employed blacks in any capacity.

Against this backdrop, and at great personal risk to himself and his family, John O. Holly succeeded in changing the system. Using the boycott and pickets, he was enormously successful in opening employment doors for blacks in Cleveland.

In 1935, he found jobs for nearly 400 blacks in Cleveland's food chain stores. In 1936, he took on the movie theaters, and was successful in getting employment for blacks as cashiers and ushers.

In 1938, he challenged the discriminatory employment practices of Woolworth Co. Holly and his followers faced violent opposition, and were hauled off to jail, but they succeeded in placing black women into jobs at Woolworth's.

Later, Holly focused attention on the horrible housing conditions in which blacks were forced to live. His efforts spearheaded improvements which resulted in more than 6,000 houses being repaired in a 3-month period, and rent reductions for hundreds of families.

He did much much more.

Mr. President, John O. Holly was a great man. He gave people hope they had never experienced before, and leadership they had never seen.

He was a tireless man, whose commitment to racial and economic equality made him a cherished figure in the Cleveland community.

The designation of this Post Office is a modest effort to recognize John O. Holly's tremendous contribution, and to ensure that his legacy is remembered by those whose lives he benefited.●

By Mr. JOHNSTON:

S.J. Res. 231. Joint resolution to authorize the entry into force of the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes; to the Committee on Energy and Natural Resources.

IMPLEMENTATION OF COMPACT OF FREE ASSOCIATION WITH THE GOVERNMENT OF PALAU

● Mr. JOHNSTON. Mr. President, I rise today to introduce a joint resolution to authorize the entry into force of the Compact of Free Association between the United States and the Government of Palau. This compact was approved by Congress and enacted as Public Law 99-658 on November 14, 1986.

Under the terms of the compact the people of Palau will achieve, through self-determination, status as a sover-

eign self-governing republic in free association with the United States, and termination of the United Nations trusteeship agreement under which the United States has administered their islands since 1947. The compact will also provide Palau with the economic and technical assistance needed to assure the growth of a sound economy. Finally, the compact will provide Palau with the security and defense protection of the United States.

The compact is a good agreement for the United States. Under its terms the territory of Palau will be completely foreclosed to the military forces of any nation except the United States. In addition, the United States can be proud of its role in assisting the people of Palau in achieving self-government. The compact agreement demonstrates the desire of the United States to promote self-government among emerging nations, and to seek association with such nations through our common interests in democratic self-government, security, and economic development.

Some of my colleagues may recall the years of lengthy and difficult negotiations which led to the final compact agreement approved by Congress last year. It was originally intended that the Compact of Free Association with Palau would be implemented in Palau as it was implemented in the Federated States of Micronesia and the Republic of the Marshall Islands, the two other Micronesian governments under free association. However, implementation of the compact in Palau was delayed because of conflicts between the terms of the compact and certain provisions of the Palau Constitution. Due in part to this controversy, Congress included a section in Public Law 99-658, section 101(d), which provides that the compact cannot be implemented until the President certifies that the compact has been approved by the Government of Palau in accordance with Palau's Constitution, and by the people of Palau in a referendum, and Congress authorized the President to implement the compact by enactment of a joint resolution.

On November 30, 1987, the President transmitted the necessary certification to Congress.

Mr. President, the joint resolution I am introducing today contains only section 1 of the resolution proposed by the President. It would authorize him to implement the compact.

Section 2 of the President's proposal would amend Public Law 99-658, and thus would amend the terms of the law under which the compact was approved by Congress.

More specifically, section 2 would allow certain banks to seek a judgment against the Government of Palau and to attach the economic assistance provided to Palau under the compact. Section 2 could thus undermine the integrity of the entire agreement. The provision in Public Law 99-658 which section 2 would repeal, section 104(e), was not included without careful consideration. It was specifically intended to prevent creditors involved in the so-called IPSECO power project in Palau from seeking a judgment and attaching financial assistance intended to be paid to Palau under the terms of the Compact.

I need not go into great detail on this issue here, suffice it to say that the U.S. Congress, specifically the Senate Appropriations Committee, made its opposition to the IPSECO project clear to the administration and to the Government of Palau. The IPSECO project was obviously well beyond the Government of Palau's financial resources. IPSECO's price for a powerplant was three times Palau's total annual operating budget. Nevertheless, despite congressional opposition and the excessive cost of the project, officials in the U.S. Department of State saw fit to encourage the project, and the Government of Palau and the banks from which they sought loans saw fit to ignore congressional opposition. To make a bad situation worse, as this project predictably soured, representatives of the creditor banks indicated their intention to attach funds to be provided to Palau under the compact. It was at this point that Congress enacted section 104(e) to protect the integrity of an agreement which had been so carefully developed over the years. Now the creditor banks are seeking legislation to repeal this protection and once again allow them to attach funding from the compact for a project which, from the outset, Congress refused to fund.

The creditor banks, the Government of Palau, and the U.S. Department of State all have unclean hands in this matter. I would simply urge that they negotiate to resolve this issue outside of congressional consideration of this joint resolution.

Mr. President, the purpose of the joint resolution I am introducing today is to authorize implementation of the compact as enacted over a year ago. I intend to schedule a hearing in the Committee on Energy and Natural Resources early in the next session and to provide an opportunity for a full debate of all issues relating to the compact. The people of Palau have been under U.S. administration for over 40 years. They have freely expressed their desire to become a self-governing republic in free association with the United States. I believe that it is incumbent on us, as the administering authority of Palau, to respond expeditiously to the request of the people and Government of Palau to implement the compact.

Mr. President, I ask unanimous consent that the text of the joint resolution and the accompany message from the President of the United States be printed in the RECORD.

There being no objection the material was ordered to be printed in the RECORD, as follows:

S.J. RES. 231

Whereas the President of the United States has certified that the Compact of Free Association between the United States and Palau has been approved in accordance with Section 411 (a) and (b) thereof, as required by Section 101(d)(A) of Public Law 99-658; and

Whereas it is the sense of Congress that the President's certification is correct and proper in light of the internationally recognized act of self-determination by which the people of Palau have approved the Compact and in view of the notification by the Government of Palau that its internal approval process has been completed: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That entry into force of the Compact of Free Association in accordance with Section 101(a) and (d) of Public Law 99-658 is hereby authorized.

SECTION 2. Section 104(e) of Public Law 99-658 is amended to read as follows:

"(e) Neither the Secretary of the Treasury nor any other officer or agent of the United States shall pay or transfer any portion of the sums and amounts payable to the Government of Palau pursuant to this joint resolution to any party other than the Government of Palau, except under the procedures established by the Compact and its related agreements.".

To the Congress of the United States:

I transmit herewith for the consideration of the Congress a proposed Joint Resolution that, in accordance with Section 101(d)(B) of Public Law 99-658, would enable the Government of the United States and the Government of Palau to implement the "Compact of Free Association" on a date mutually agreed to by our Governments.

In accordance with Section 101(d)(A) of Public Law 99-658, I hereby certify to the Congress that the Compact of Free Association between the United States and Palau has been approved in accordance with Section 411 (a) and (b) thereof, and that there exists no legal impediment to the ability of the United States to carry out fully its responsibilities and to exercise its rights under Title Three of the Compact.

The foregoing certification is based upon notification by the Government of Palau that its internal constitutional approval process has been completed. Specifically, on August 29, 1987, President Lazarus E. Salii certified in writing to the Department of State that 73 percent of the people of Palau voting in a plebiscite observed by the United Nations on August 21, 1987, approved the Compact. The Palau National Congress gave its final approval to the Compact on August 27, 1987. Under their constitution, the people of Palau have freely chosen self-government and free association with the United States.

The proposed Joint Resolution would also amend Section 104(e) of Public Law 99-658 in two ways. First, additional language would be added to the first sentence of this subsection, stating that money payable by the United States to Palau shall be paid to Palau in accordance with procedures provided by the Compact and its related agree-

ments. For example, Palau may wish to issue a bond and the additional language would clarify that payment into such an encumbered bank account would be consistent with U.S. responsibilities to Palau. This would place Palau on an equal footing with the other freely associated states.

Second, the proposed Joint Resolution would repeal the last sentence of Section 104(e), which purports to strip United States courts of jurisdiction over commercial litigation now pending in the Federal courts between Palau and certain of its creditors. This attempt to grant Palau sovereign immunity for a single case relating to a power plant project is inconsistent with United States law and policy as embodied in the Foreign Sovereign Immunities Act of 1976. Repeal of this provision would protect the reputation of the United States as an international financial center and allow Palau and its creditors to pursue the rights and remedies available to them through the judicial process. Such repeal would also permit the routine application of the Foreign Sovereign Immunities Act. This would not in any way prejudge the matter, but merely enable the case to be heard in the courts of the United States.

Approval of the enclosed Joint Resolution would enable the United States to bring the Compact into effect and end application of the 1947 Trusteeship Agreement with the United Nations Security Council, under which the United States has administered Palau. The end of the trusteeship would mean the beginning of a new area of political, economic, strategic, and cultural partnership between the United States and Palau.

Therefore, I urge the Congress to pass the attached proposed Joint Resolution authorizing entry into force of the "Compact of Free Association."

RONALD REAGAN●

ADDITIONAL COSPONSORS

S. 101

At the request of Mr. INOUYE, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 101, a bill to amend titles XVIII and XIX of the Social Security Act to provide that a nurse practitioner or clinical nurse specialist may, in collaboration with a physician, certify or recertify the need for certain services, to provide for coverage of certain items and services furnished by a nurse practitioner or clinical nurse specialist, and for other purposes.

S. 533

At the request of Mr. THURMOND, the names of the Senator from Nebraska [Mr. EXON], and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of S. 533, a bill to establish the Veterans' Administration as an executive department.

S. 889

At the request of Mr. GORE, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 889, a bill to amend the Communications Act of 1934 to provide for fair marketing practices for certain encrypted satellite communications.

S. 1345

At the request of Mr. MCCONNELL, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 1345, a bill to allow the National Association of State Racing Commissioners, State racing commissions and regulatory authorities that regulate parimutuel wagering to receive and share Federal Government criminal identification records.

S. 1679

At the request of Mr. HATCH, the name of the Senator from Virginia [Mr. TRIBLE] was added as a cosponsor of S. 1679, a bill to establish a block grant program for child care services, and for other purposes.

S. 1808

At the request of Mr. BUMPERS, the name of the Senator from Connecticut [Mr. WEICKER] was added as a cosponsor of S. 1808, a bill to require the Secretary of Health and Human Services to determine the appropriate regulatory classification of the transitional devices of the medical device amendments, and for other purposes.

SENATE JOINT RESOLUTION 156

At the request of Mr. GRASSLEY, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of Senate Joint Resolution 156, a joint resolution to establish a U.S. Commission on Improving the Effectiveness of the United Nations.

SENATE JOINT RESOLUTION 206

At the request of Mr. DOMENICI, the names of the Senator from Ohio [Mr. METZENBAUM], the Senator from Kentucky [Mr. FORD], and the Senator from Arizona [Mr. DECONCINI] were added as cosponsors of Senate Joint Resolution 206, a joint resolution to declare Dennis Chavez Day.

SENATE CONCURRENT RESOLUTION 43

At the request of Mr. STEVENS, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of Senate Concurrent Resolution 43, a concurrent resolution to encourage State and local governments and local educational agenices to provide quality daily physical education programs for all children from kindergarten through grade 12.

SENATE RESOLUTION 314

At the request of Mr. NICKLES, his name was added as a cosponsor of Senate Resolution 314, a resolution expressing the sense of the Senate regarding the American Civil Defense Program.

AMENDMENTS SUBMITTED

OMNIBUS BUDGET RECONCILIATION ACT

CRANSTON AMENDMENT NO. 1252

(Ordered to lie on the table.)

Mr. CRANSTON submitted an amendment intended to be proposed to the bill (S. 1920) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1988; as follows:

At the appropriate place in subtitle B of title IV, insert the following new section:

SEC. . INTEREST ALLOCATION RULES NOT TO APPLY WHERE NO TAX INCREASE RESULTS.

(a) IN GENERAL.—If a taxpayer elects the application of this section for any taxable year—

(1) section 864(e) of the Internal Revenue Code of 1986 shall not apply, and

(2) the allocation and apportionment of interest and other expenses to which such section applies shall be made in the same manner as before the enactment of such section.

(b) NO ELECTION MAY BE MADE UNLESS NO INCREASE IN TAX.—No election may be made under subsection (a) for any taxable year if the application of section 864(e) of such Code would result in an increase in Federal income tax liability for such taxable year.

(c) APPLICATION FOR SUBSEQUENT TAXABLE YEAR.—If the Federal income tax liability for any taxable year following a taxable year for which an election was in effect under subsection (a) would have been increased but for such election, such liability shall be computed as if such election had not been in effect.

(d) ELECTION.—An election under subsection (a) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.

(e) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning after December 31, 1986.

TRANSFER OF OBSOLETE SUBMARINE "TURBOT" TO DADE COUNTY, FL

METZENBAUM (AND OTHERS) AMENDMENT NO. 1253

Mr. BYRD (for Mr. METZENBAUM, for himself, Mr. BOSCHWITZ, Mr. PACKWOOD, and Mr. DOLE) proposed an amendment to the bill (H.R. 3283) to allow the obsolete submarine U.S. ship *Turbot* to be transferred to Dade County, FL, before the expiration of the otherwise applicable 60-day congressional review period; as follows:

At the end of the bill, add the following new section:

SEC. . Notwithstanding any other provision of law, any sale or other transfer to Saudi Arabia by the United States of F-15 aircraft shall be subject to the following conditions:

(1) Any such F-15 aircraft sold or otherwise transferred to Saudi Arabia shall be limited to models A, B, C, and D.

(2) The United States shall not sell or otherwise transfer to Saudi Arabia the F-15-E or other advanced aircraft with a ground attack capability and shall not upgrade existing Saudi aircraft to that capability.

(3) Saudi Arabia shall not possess more than 60 F-15 aircraft at any one time, except that additional replacement F-15 aircraft may be held in the United States, at the expense of Saudi Arabia, for shipment to Saudi Arabia only after the President notifies the Congress that the existing inventory of F-15 aircraft held by Saudi Arabia is less than 60 and, then, only on a one-for-one replacement basis as each F-15 aircraft is removed from the inventory of Saudi Arabia.

OMNIBUS BUDGET RECONCILIATION ACT

BYRD (AND OTHERS) AMENDMENT NO. 1254

(Ordered to lie on the table.)

Mr. BYRD (for himself, Mr. DOLE, Mr. CHILES, Mr. DOMENICI, Mr. BENTSEN, Mr. STENNIS, Mr. JOHNSTON, and Mr. HATFIELD) submitted an amendment intended to be proposed to the bill (S. 1920), supra; as follows:

On page 88, beginning with line 1, strike out all through the end of the bill and insert in lieu thereof the following:

TITLE IV—COMMITTEE ON FINANCE

Subtitle A—Health, Social Services, and Income Security

SEC. 4000. TABLE OF CONTENTS.

Subtitle A—Health, Social Services, and Income Security

Sec. 4000. Table of contents.

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Subtitle A—Health, Social Services, and Income Security

PART A—PROVISIONS WITH MAJOR BUDGETARY IMPACT

Subpart I—Provisions Affecting Medicare Part A

SEC. 4001. HOSPITAL PAYMENTS.

(a) APPLICABLE PERCENTAGE INCREASE IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES.—

(1) Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended—

(A) in clause (i)—

(i) in the matter preceding subclause (I), by striking "year and for purposes of subsection (d) for discharges occurring during a fiscal year," and inserting in lieu thereof "year,",

(ii) in subclause (II), by striking "percent," and all that follows through "and" and inserting in lieu thereof "percent,",

(iii) by redesignating subclause (III) as subclause (V),

(iv) by inserting after subclause (II) the following new subclauses:

"(III) for fiscal year 1988, 2.7 percent,

"(IV) for fiscal years 1989 and 1990, the market basket percentage increase (as defined in clause (iii)), and", and

(v) in subclause (V) (as redesignated by subparagraph (C)), by striking "1989" and inserting in lieu thereof "1991";

(B) by redesignating clause (ii) as clause (iii); and

(C) by inserting immediately after clause (i) the following new clause:

"(ii) For purposes of subsection (d) for discharges occurring during a fiscal year, the 'applicable percentage increase' shall be—

"(I) for fiscal year 1986, 0.5 percent,

"(II) for fiscal year 1987, 1.15 percent,

"(III) for fiscal year 1988, 0.5 percent in the case of hospitals paid at the urban rate and 3.7 percent in the case of hospitals paid at the rural rate,

"(IV) for fiscal year 1989, the market basket percentage increase (as defined in clause (iii)) minus 2 percentage points,

"(V) for fiscal year 1990, the market basket percentage increase (as defined in such clause) minus 1.6 percentage points, and

"(VI) for fiscal year 1991 and subsequent fiscal years, the percentage determined by the Secretary pursuant to subsection (e)(4).".

(2)(A) Section 1886(d)(3)(A) of such Act (42 U.S.C. 1395ww(d)(3)(A)) is amended by striking "and 1988" and inserting in lieu thereof "1988, 1989, and 1990".

(B) Section 1886(e)(4) of such Act (42 U.S.C. 1395ww(e)(4)) is amended—

(i) by striking "fiscal year 1988" and inserting in lieu thereof "fiscal years 1988, 1989, and 1990"; and

(ii) by striking the last sentence and inserting in lieu thereof the following: "The percentage change may be different for urban subsection (d) hospitals, urban subsection (d) Puerto Rico hospitals, rural subsection (d) hospitals, rural subsection (d) Puerto Rico hospitals, and all other hospitals and units exempt from the prospective payment system, and may vary among such other hospitals and units.".

(3) The amendments made by paragraphs (1) and (2) shall apply to cost reporting periods beginning on or after October 1, 1987, excluding the first 51 days of the first such cost reporting period, and for purposes of section 1886(d) of the Social Security Act, for discharges occurring on or after January 1, 1988.

(4) Subsection (a)(1)(B)(ii) of section 107 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 is amended by inserting ", the target percentage and DRG percentage shall be those specified in subsection (d)(1)(c)(iv) of such section, and the applicable percentage increase shall be deemed to be 0 percent" before the end period.

(b) MEDICARE PAYMENTS TO SOLE COMMUNITY HOSPITALS.—

(1) Not later than 120 days after the date of the enactment of this Act, the Secretary shall issue, to agencies and organizations through which payments are made under part A of title XVIII of the Social Security Act, implementing instructions that set forth clearly and explicitly the manner in which a sole community hospital may apply for an adjustment of the type described in the second sentence of section 1886(d)(5)(C)(ii) of such Act and the factors that such a hospital is required to demonstrate in order to qualify for such an adjustment.

(2) Section 1886(d)(5)(C)(ii) (42 U.S.C. 1395ww(d)(5)(C)(ii)) is amended—

(A) by striking "1988" in the second sentence and inserting in lieu thereof "1990", and

(B) by inserting between the second and third sentences the following: "A subsection (d) hospital that meets the criteria for classification as a sole community hospital and otherwise qualifies for the adjustment authorized by the preceding sentence may qualify for such an adjustment without regard to the formula by which payments are determined for the hospital under paragraph (1)(A).".

(3)(A) The amendments made by paragraph (2) shall apply to cost reporting periods beginning on or after October 1, 1987.

(B) The Secretary of Health and Human Services shall take appropriate steps to ensure that the total amount paid in a fiscal year under title XVIII of the Social Security Act by reason of the amendment made by paragraph (2)(B) does not exceed—

(i) $10,000,000 in the case of fiscal year 1988; and

(ii) $12,000,000 in the case of fiscal year 1989.

(c) IMPACT ANALYSES OF MEDICARE AND MEDICAID RULES AND REGULATIONS ON SMALL RURAL HOSPITALS.—

(1) Section 1102 (42 U.S.C. 1302) is amended—

(A) by inserting "(a)" after "SEC. 1102.", and

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

"(b)(1) Whenever the Secretary publishes a general notice of proposed rulemaking for any rule or regulation proposed under title XVIII, title XIX, or part B of this title that may have a significant impact on a substantial number of small rural hospitals, the Secretary shall prepare and make available for public comment an initial regulatory impact analysis. Such analysis shall describe the impact of the proposed rule or regulation on such hospitals and shall set forth, with respect to small rural hospitals, the matters required under section 603 of title 5, United States Code, to be set forth with respect to small entities. The initial regulatory impact analysis (or a summary) shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule or regulation.

"(2) Whenever the Secretary promulgates a final version of a rule or regulation with respect to which an initial regulatory impact analysis is required by paragraph (1), the Secretary shall prepare a final regulatory impact analysis with respect to the final version of such rule or regulation. Such analysis shall set forth, with respect to small rural hospitals, the matters required under section 604 of title 5, United States Code, to be set forth with respect to small entities. The Secretary shall make copies of the final regulatory impact analysis available to the public and shall publish, in the Federal Register at the time of publication of the final version of the rule or regulation, a statement describing how a member of the public may obtain a copy of such analysis.

"(3) If a regulatory flexibility analysis is required by chapter 6 of title 5, United States Code, for a rule or regulation to which this subsection applies, such analysis shall specifically address the impact of the rule or regulation on small rural hospitals.".

(2) The amendments made by paragraph (1) shall apply to regulations proposed more than 30 days after the date of the enactment of this Act.

(d) HOSPITAL COST REPORT.—

(1)(A) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall develop a data base of the operating costs of inpatient hospital services for a representative sample of hospitals, for use by the Congress and the Secretary in determining an appropriate applicable percentage increase under section 1886(b)(3)(B) of the Social Security Act, evaluating the appropriateness of other payment adjustments under section 1886, and analyzing legislative, regulatory, and budgetary changes.

(B) In selecting a representative sample of hospitals for the data base required to be developed pursuant to subparagraph (A), the Secretary shall—

(i) select subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act) with cost reporting periods beginning during the first four months of the fiscal year of the United States Government, and

(ii) to the extent practicable, provide for adequate representation of small rural hospitals, sole community hospitals, and rural referral centers.

(C) The Secretary shall report to the Congress on the data base developed pursuant to subparagraph (A) not later than October 1, 1988.

(2) The Secretary shall develop and place into effect not later than June 1, 1989, a data base of the operating costs of inpatient hospital services with respect to all hospitals under title XVIII of the Social Security Act, which data base shall be updated at least once every quarter (and maintained for the 12-month period preceding any such update). The data base under this subsection may include data from preliminary cost reports (but the Secretary shall make available an update analysis of the differences between preliminary and settled cost reports).

(3)(A) Subject to subparagraph (B), with respect to cost reporting periods beginning on or after October 1, 1989, the Secretary shall place into effect a standardized electronic cost reporting format.

(B) The Secretary may delay or waive the implementation of such format in particular instances where such implementation would result in financial hardship (in particular with respect to small or rural hospitals or any hospital with a small percentage of medicare volume).

(4) The Secretary shall consult representatives of the hospital industry in carrying out the provisions of this section.

(e) PROPAC REPORT ON STUDY OF SEPARATE DRG RATES FOR URBAN AND RURAL HOSPITALS.—The Prospective Payment Assessment Commission shall evaluate the study conducted by the Secretary of Health and Human Services pursuant to section 603(a)(2)(C)(i) of the Social Security Amendments of 1983 (relating to the feasibility and impact of eliminating or phasing out separate urban and rural DRG prospective payment rates) and report its conclusions and recommendations to the Congress not later than March 1, 1988.

(f) WAGE INDEX SURVEY.—Section 1886(d)(3)(E) (42 U.S.C. 1395ww(d)(3)(E)) of such Act is amended by adding at the end thereof the following: "Not later than October 1, 1989 (and at least every 36 months thereafter), the Secretary shall update the factor under the preceding sentence on the basis of a survey conducted by the Secretary (and updated as appropriate) of the wages and wage-related costs of subsection (d) hospitals in the United States. To the extent determined feasible by the Secretary, such survey shall measure the earnings and paid hours of employment by occupational category and shall exclude data with respect to the wages and wage-related costs incurred in furnishing skilled nursing facility services.".

(g) REVISION OF STANDARDS FOR INCLUDING A RURAL COUNTY IN AN URBAN AREA.—

(1) Section 1886(d)(8) of such Act (42 U.S.C. 1395ww(d)(8)) is amended—

(A) by redesignating clauses (i) and (ii) of subparagraphs (A) and (B) as subclauses (I) and (II), respectively,

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(C) by inserting "(A)" after "(8)", and

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

"(B) The Secretary shall treat a hospital located in a rural county adjacent to one or more urban areas as being located in the urban metropolitan statistical area to which the greatest number of workers in the county commute, if—

"(i) the rural county would otherwise be considered an urban area but for the fact that the rural county does not meet the standard relating to the rate of commutation between the rural county and the central county or counties of any one adjacent urban area; and

"(ii) either (I) the number of residents of the rural county who commute for employment to the central county or counties of any adjacent urban area or areas is equal to at least 15 percent of the number of residents of the rural county who are employed, or (II) the sum of the number of residents of the rural county who commute for employment to the central county or counties of all adjacent urban areas and the number of residents of the central county or counties of all adjacent urban areas who commute for employment to the rural county is at least equal to 20 percent of the number of residents of the rural county who are employed.

"(C) The Secretary shall make a proportional adjustment in the standardized amount determined under section 1886(d)(3) for hospitals paid at the urban rate to assure that the provisions of subparagraph (B) do not result in aggregate payments under this section that are greater or less than the aggregate amount of payments that would have resulted in the absence of the provisions of subparagraph (B). For purposes of computing the wage indices under this section, hospitals to which subparagraph (B) applies shall be treated as rural hospitals.".

(2) The amendments made by paragraph (1) shall apply to discharges occurring on or after January 1, 1988.

(3) For purposes of section 1886 of the Social Security Act, Watertown Memorial Hospital in Watertown, Wisconsin, is deemed to be located in Jefferson County, Wisconsin.

(h) CLINIC HOSPITAL WAGE INDICES.—In calculating the wage index under section 1886(d) of the Social Security Act for purposes of making payment adjustments after December, 1986, as required under paragraphs (2)(H) and (3)(E) of such section, in the case of any institution described in section 602(k) of the Social Security Amendments of 1983, the Secretary of Health and Human Services shall include wage costs paid to related organization employees directly involved in the delivery and administration of care provided by the related organization to hospital inpatients. For purposes of the preceding sentence, the term 'wage costs' does not include costs of overhead or home office administrative salaries or any costs that are not incurred in the hospital's Standard Metropolitan Statistical Area.

(i) PSYCHOLOGISTS' SERVICES FURNISHED TO HOSPITAL INPATIENTS.—

(1) Section 1861(b)(3) of such Act (42 U.S.C. 1395x(b)(3)) is amended by inserting "(including a clinical psychologist (as defined by the Secretary))" after "others" the first place it appears.

(2) The amendment made by paragraph (1) shall apply with respect to services furnished on or after the date of enactment of this Act.

(j) HOSPITAL CONDITION OF PARTICIPATION RELATED TO INDIVIDUAL RESPONSIBLE FOR CARE OF PATIENT.—Section 1861(e)(4) of such Act (42 U.S.C. 1395x(e)(4)) is amended by inserting "with respect to whom payment may be made under this title" after "patient".

(k) OUTLIER PAYMENTS FOR BURN CASES.—

(1) The Prospective Payment Assessment Commission (in this subsection referred to as the "Commission") shall conduct a study of possible modifications to the prospective payment system established under section 1886(d) of the Social Security Act that will provide more adequate and appropriate payments with respect to burn outlier cases, including a recommendation with respect to whether separate payment rates should be established for burn center hospitals. The Commission shall report the results of the study to the Congress not later than April 1, 1988.

(2)(A) Section 1886(d)(5)(A)(iii) of such Act (42 U.S.C. 1395ww(d)(5)(A)(iii)) is amended—

(i) by inserting "(I)" after "(iii)", and

(ii) by adding at the end thereof the following new subclause:

"(II) In the case of any burn-related discharge described in clause (i) or (ii), the amount of the additional payment under such clause shall equal 90 percent of the cost of care beyond the applicable cutoff point.".

(B) Subclause (II) of section 1886(d)(5)(A)(iii) of such Act shall be implemented in a manner that ensures that total payments under section 1886 of such Act are not increased or decreased by reason of the adjustments required by such subclause.

(3) The amendments made by paragraph (1) shall apply to discharges occurring on or after January 1, 1988, and before October 1, 1989.

(l) CHANGING COST-EFFECTIVENESS PERFORMANCE PERIOD UNDER DEMONSTRATION PROJECT REIMBURSEMENT SYSTEM.—Section 1814(b)(3) of such Act (42 U.S.C. 1395f(b)(3)) is amended by striking "for the previous three-year period" and inserting in lieu thereof "for any period beginning on October 1, 1983, and ending on the most recent date for which relevant data are available".

(m) MAINTAINING METHOD OF REIMBURSING HOSPITALS FOR BAD DEBT UNDER PROSPECTIVE PAYMENT SYSTEM.—The Secretary of Health and Human Services shall continue and shall not issue regulations to alter the method for making payments to hospitals under title XVIII of the Social Security Act for the reasonable costs relating to unrecovered costs associated with unpaid deductible or coinsurance amounts for inpatient hospital services covered under part A of such title under policy guidelines (including criteria for what constitutes a reasonable collection effort) in effect on March 31, 1987.

(n) REPORT ON OUTLIER PAYMENTS.—The Secretary of Health and Human Services shall include in the annual report submitted to the Congress pursuant to section 1875(b) of the Social Security Act a comparison with respect to hospitals located in an urban area and hospitals located in a rural area in the amount of reductions under section 1886(d)(3)(B) of the Social Security Act and additional payments under section 1886(d)(5)(A) of such Act.

(o) CLASSIFICATION OF RURAL REFERRAL CENTERS.—

(1) Section 1886(d)(5)(C)(i)(I) of such Act (42 U.S.C. 1395ww(d)(5)(C)(i)(I)) is amended in the first sentence by striking "500" and inserting in lieu thereof "275".

(2) Section 1886(d)(5)(C)(i) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(C)(i)) is amended by adding at the end thereof the following new subclause:

"(III) The Secretary shall provide, under subclause (I), for the classification of a rural hospital as a regional referral center if the hospital has a case mix equal to or greater than both the median case mix for hospitals (other than hospitals with approved teaching programs) located in an urban area within the United States and the median case mix for hospitals (other than hospitals with approved teaching programs) located in an urban area in the same region (as defined in paragraph (2)(D)), meets the criterion established by the Secretary under subclause (I) with respect to the annual number of discharges for a rural osteopathic hospital, and meets any other criteria established by the Secretary under subclause (I). The Secretary shall implement the provisions of this subclause in a manner that ensures that total payments under this section are not increased or decreased by reason of the classifications required by such provisions.".

(3)(A) Subject to subparagraph (B), the amendments made by paragraphs (1) and

(2) shall apply to payments for discharges occurring on or after January 1, 1988.

(B) An appeal for classification of a rural hospital as a regional referral center, pursuant to the amendments made by paragraphs (1) and (2), which is filed before April 1, 1988, and which is approved shall be effective with respect to discharges occurring on or after January 1, 1988, without regard to when the hospital's cost reporting period began.

(p). GRANT PROGRAM FOR RURAL HEALTH CARE TRANSITION.—

Title XVIII of the Social Security Act is amended by inserting after section 1884 the following new section:

"GRANTS TO RURAL HOSPITALS

"SEC. 1884A. (a) The Secretary shall establish a program of grants to assist eligible small rural hospitals and their communities in the planning and implementation of projects to modify the type and extent of services such hospitals provide in order to adjust for one or more of the following factors:

"(1) Changes in clinical practice patterns,

"(2) Changes in service populations,

"(3) Declining demand for acute-care inpatient hospital capacity,

"(4) Declining ability to provide appropriate staffing for inpatient hospitals,

"(5) Increasing demand for ambulatory and emergency services,

"(6) Increasing demand for appropriate integration of community health services, or

"(7) The need for adequate access (including appropriate transportation) to emergency care and inpatient care in areas in which a significant number of underutilized hospital beds are being eliminated.

The program shall be established through the Administrator of the Health Care Financing Administration and shall be conducted by the Administrator in consultation with the Assistant Secretary for Health (or a designee).

"(b) For purposes of this section, the term 'eligible small rural hospital' means any hospital that—

"(1) is located in a rural area (as determined in accordance with subsection (d)),

"(2) has less than 100 beds,

"(3) provides patient services (diagnostic and therapeutic) for a variety of medical conditions, and

"(4) is classified as a—

"(A) government-nonfederal,

"(B) nongovernment not-for-profit, or

"(C) church-operated as osteopathic or other not-for-profit osteopathic,

hospital under the classification codes of the American Hospital Association.

"(c)(1) Any eligible small rural hospital that desires to modify the type or extent of health care services that it provides in order to adjust for one or more of the factors specified in subsection (a) may submit an application to the Governor of the State in which it is located. The application shall specify the nature of the project proposed by the hospital, the data and information on which the project is based, and a timetable (of not more than twenty-four months) for completion of the project. The application shall be submitted on or before a date specified by the Secretary and shall be in such form as the Secretary may require.

"(2) The Governor shall transmit any application submitted pursuant to paragraph (1) to the Secretary not later than 30 days after it is received by the Governor, accompanied by any comments with respect to the application that the Governor deems appropriate.

"(3) The Governor of a State may designate an appropriate State agency to receive and comment on applications submitted under paragraph (1).

"(d) A hospital shall be considered to be located in a rural area for purposes of this section if it is treated as being located in a rural area for purposes of section 1886(d)(3)(D).

"(e) In determining which hospitals making application under subsection (c) will receive grants under this section, the Secretary shall take into account—

"(1) any comments received under subsection (c)(2) with respect to a proposed project;

"(2) the effect that the project will have on—

"(A) reducing expenditures from the Federal Hospital Insurance Trust Fund,

"(B) improving the access of medicare beneficiaries to health care of a reasonable quality;

"(3) the extent to which the proposal of the hospital, using appropriate data, demonstrates an understanding of—

"(A) the primary market or service area of the hospital, and

"(B) the health care needs of the elderly and disabled that are not currently being met by providers in such market or area, and

"(4) the degree of coordination that may be expected between the proposed project and—

"(A) other local or regional health care providers, and

"(B) community and government leaders, as evidenced by the availability of support for the project (in cash or in kind) and other relevant factors.

"(f) A grant to a hospital under this section may not exceed $50,000 a year and may not exceed a term of two years.

"(g)(1) Except as provided in paragraphs (2) and (3), a hospital receiving a grant under this section may use the grant for any of expenses incurred in planning and implementing the project with respect to which the grant is made.

"(2) A hospital receiving a grant under this section for a project may not use the grant to retire debt incurred with respect to any capital expenditure made prior to the date on which the project is initiated.

"(3) Not more than one-third of any grant made under this section may be expended for capital-related costs (as defined by the Secretary for purposes of section 1886(a)(4)) of the project.

"(h)(1) A hospital receiving a grant under this section shall furnish the Secretary with such information as the Secretary may require to evaluate the project with respect to which the grant is made and to ensure that the grant is expended for the purposes for which it was made.

"(2) The Secretary shall report to the Congress at least once every six months on the program of grants established under this section. The report shall assess the functioning and status of the program, shall evaluate the progress made toward achieving the purposes of the program, and shall include any recommendations the Secretary may deem appropriate with respect to the program. In preparing the report, the Secretary shall solicit and include the comments and recommendations of private and public entities with an interest in rural health care.

"(3) The Secretary shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

"(i) The provisions of section 1122 shall not apply to capital expenditures made with respect to any project for which a grant is made under this section.

"(j) For purposes of carrying out the program of grants under this section, there are authorized to be appropriated from the Federal Hospital Insurance Trust Fund $15,000,000 for each of the fiscal years 1989 and 1990.".

(q) DELAY IN REQUIREMENTS RELATING TO HOSPITAL STANDARDS FOR ORGAN TRANSPLANTS AND STANDARDS FOR ORGAN PROCUREMENT AGENCIES.—

(1) Section 9318(b) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 107(c) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, is amended by striking "November 21, 1987" each place it appears and inserting in lieu thereof "December 31, 1988".

(2) The amendment made by paragraph (1) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4002. MEDICAL EDUCATION.

(a) INDIRECT MEDICAL EDUCATION.—

(1) Section 1886(d)(5)(B)(ii) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(ii)) is amended—

(A) in subclause (I), by striking "2" and inserting in lieu thereof "1.56"; and

(B) in subclause (II), by striking "1.5" and inserting in lieu thereof "1.7", and by striking out ".5795" and inserting in lieu thereof ".405".

(2) Section 1886(d)(3)(C)(ii) of such Act (42 U.S.C. 1395ww(d)(3)(C)(ii)) is amended—

(A) in the heading, by striking "SEPTEMBER 30, 1986" and inserting in lieu thereof "DECEMBER 31, 1987";

(B) in the matter preceding subclause (I)—

(i) by striking "September 30, 1986" and inserting in lieu thereof "December 31, 1987",

(ii) by inserting "proportionately" after "reduce", and

(iii) by striking "(in" and all that follows through "(i))";

(C) in subclause (I)—

(i) by striking "October 1, 1986" and inserting in lieu thereof "December 31, 1987", and

(ii) by inserting "and by section 4002 of the Omnibus Budget Reconciliation Act of 1987" after "1985"; and

(D) in subclause (II), by inserting "and by section 4002 of the Omnibus Budget Reconciliation Act of 1987" after "1985".

(3) The amendments made by this subsection shall apply to discharges occurring on or after January 1, 1988.

(b) EXCLUSION OF COSTS INCURRED WITH RESPECT TO FOREIGN MEDICAL GRADUATES.—Section 1886(h)(4) of such Act (42 U.S.C. 1395ww(h)(4)) is amended by adding at the end thereof the following new subparagraph:

"(F) FOREIGN MEDICAL GRADUATE EXCLUSION.—

"(i) IN GENERAL.—Except as provided in clauses (ii), (iii), and (iv), such rules shall provide that, in the case of an individual who is a foreign medical graduate (as defined in paragraph (5)(D)), the individual shall not be counted as a resident with respect to any cost reporting period beginning on or after July 1, 1988.

"(ii) FIRST TRANSITIONAL RULE.—With respect to the first cost reporting period beginning on or after July 1, 1988, such rules shall provide that the lesser of—

"(I) two-thirds of the number of a hospital's residents for such cost reporting period who are foreign medical graduates but who began their formal training required for initial board eligibility in the specialty for which they are preparing prior to July 1, 1988, or

"(II) two-thirds of the number of residents who are foreign medical graduates but with respect to whom the hospital received payments under this subsection for the last cost reporting period beginning before July 1, 1988,

shall be counted as residents.

"(iii) SECOND TRANSITIONAL RULE.—With respect to the second cost reporting period beginning on or after July 1, 1988, such rules shall provide that the lesser of—

"(I) one-third of the number of a hospital's residents for such cost reporting period who are foreign medical graduates but who began their formal training required for initial board eligibility in the specialty for which they are preparing prior to July 1, 1988, or

"(II) one-third of the number of residents who are foreign medical graduates but with respect to whom the hospital received payments under this subsection for the last cost reporting period beginning before July 1, 1987,

shall be counted as residents.

"(iv) SPECIAL TRANSITIONAL RULE FOR HOSPITALS WITH HIGH PERCENTAGE OF FOREIGN MEDICAL GRADUATES.—In the case of a hospital at which, on September 1, 1987, more than 50 percent of the residents for which such hospital receives payments under this subsection are foreign medical graduates, such rules shall provide that the provisions of clause (ii) shall apply for the first 2 cost reporting periods beginning on or after July 1, 1988, and the provisions of clause (iii) shall apply to the subsequent 3 cost reporting periods.".

(c) RURAL HEALTH MEDICAL EDUCATION DEMONSTRATION PROJECT.—

(1) The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into agreements with four sponsoring hospitals submitting applications under this paragraph to conduct demonstration projects to assist resident physicians in developing field clinical experience in rural areas.

(2) Under a demonstration project conducted under paragraph (1), a sponsoring hospital entering into an agreement with the Secretary under such paragraph shall enter into arrangements with a small rural hospital to provide to such rural hospital, for a period of one to three months of training, physicians (in such number as the agreement under paragraph (1) may provide) who have completed one year of residency training.

(3) In selecting from among applications submitted under paragraph (1), the Secretary shall ensure that four small rural hospitals located in different counties participate in the demonstration project and that—

(A) two of such hospitals are located in rural counties of more than 2,700 square miles (one of which is east of the Mississippi River and one of which is west of such river); and

(B) two of such hospitals are located in rural counties with (as determined by the Secretary) a severe shortage of physicians (one of which is east of the Mississippi River and one of which is west of such river).

(4) For purposes of section 1886 of the Social Security Act—

(A) with respect to subsection (d)(5)(B) of such section, any resident physician participating in the project under paragraph (1) for any part of a year shall be treated as if he or she were working at the appropriate sponsoring hospital with an agreement under paragraph (1) on September 1 of such year (and shall not be treated as if working at the small rural hospital); and

(B) with respect to subsection (h) of such section, the payment amount permitted under such subsection for a sponsoring hospital with an agreement under paragraph (1) shall be increased (for the duration of the project only) by an amount equal to the amount of any direct graduate medical education costs (as defined in paragraph (5) of such subsection (h)) incurred by such hospital in supervising the education and training activities under a project under paragraph (1).

(5) Each demonstration project under paragraph (1) shall be commenced not later than six months after the date of enactment of this Act and shall be conducted for a period of three years.

(6) In this subsection, the term "sponsoring hospital" means a hospital that receives payments under sections 1886(d)(5)(B) and 1886(h) of the Social Security Act.

SEC. 4003. PAYMENTS FOR HOSPITAL CAPITAL-RELATED COSTS.

(a) IN GENERAL.—Section 1886(g)(3)(A) of the Social Security Act (42 U.S.C. 1395ww(g)(3)(A)) is amended—

(1) by striking clause (ii) and inserting in lieu thereof the following new clause:

"(ii) 12 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) in fiscal year 1988 occurring on or after January 1, 1988, and to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1989, and"; and

(2) in clause (iii), by striking "1989" and inserting in lieu thereof "1990".

(b) CLARIFICATION OF SECRETARIAL AUTHORITY TO INCORPORATE PAYMENT FOR OTHER CAPITAL-RELATED COSTS UNDER THE PROSPECTIVE PAYMENT SYSTEM.—Section 1886(a)(4) of such Act (42 U.S.C. 1395ww(a)(4)) is amended by striking "1987" and inserting in lieu thereof "1991".

(c) TREATMENT OF CAPITAL-RELATED REGULATIONS.—

(1) Notwithstanding any other provision of law (except as provided in paragraph (3)), the Secretary of Health and Human Services may not change the definition of capital-related costs or change the methodology for computing the amount of payment for capital-related costs (as defined in paragraph (4)) for inpatient hospital services under part A of title XVIII of the Social Security Act. Any regulation published in violation of the previous sentence after August 1, 1987, and before the date of enactment of this Act is void and of no effect.

(2) Any reference in law to a regulation issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act shall not include any regulation issued or proposed with respect to capital-related costs (as defined in paragraph (4)).

(3) Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing subsections (g)(3)(A) and (g)(3)(B) of section 1886 of the Social Security Act (as amended by section 9303(a) of the Omnibus Budget Reconciliation Act of 1986 and subsection (a) of this section).

(4) In this subsection, the term "capital-related costs" means those capital-related costs that are specifically excluded, under the second sentence of section 1886(a)(4) of the Social Security Act, from "operating costs of inpatient hospital services" (as defined in that section) for cost reporting periods beginning prior to October 1, 1989.

(d) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to portions of cost reporting periods or discharges occurring on or after January 1, 1988.

SEC. 4004. ELIMINATION OF PERIODIC INTERIM PAYMENT SYSTEM (PIP) FOR CERTAIN HOSPITALS AND EXTENSION OF DISPROPORTIONATE SHARE ADJUSTMENT.

(a) IN GENERAL.—Section 1815(e)(1) of the Social Security Act (42 U.S.C. 1395g(e)(1)) is amended—

(1) in subparagraph (B), by striking "In" and inserting in lieu thereof "Subject to the last sentence of this paragraph, in"; and

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

"No payment shall be made under subparagraph (B) on a periodic payment basis on or after July 1, 1990; except that, the Secretary may provide with respect to a hospital that payments be made on such basis under such subparagraph on or after such date (for such period of time as the Secretary determines is appropriate) if the hospital demonstrates to the satisfaction of the Secretary that discontinuing payments on such basis would pose an immediate threat to the ability of the hospital to operate.".

(b) TEMPORARY DELAY IN PAYMENTS IN FISCAL YEAR 1989.—Notwithstanding section 1815(a) of the Social Security Act, in the case of a hospital which is paid periodic interim payments under section 1815(e)(1)(B) of such Act, the Secretary of Health and Human Services shall provide with respect to at least the last twenty-one days for which such payments would be made during fiscal year 1989, that such payments shall be deferred until fiscal year 1990.

(c) For the purposes of section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, this section is a necessary (but secondary) result of a significant policy change.

(d) EXTENSION OF DISPROPORTIONATE SHARE ADJUSTMENT.—Sections 1886(d)(2)(C)(iv) (42 U.S.C. 1395ww(d)(2)(C)(iv)), 1886(d)(3)(C)(ii)(I) (42 U.S.C. 1395ww(d)(3)(C)(ii)(I)), 1886(d)(3)(C)(ii)(II) (42 U.S.C. 1395ww(d)(3)(C)(ii)(II)), 1886(d)(5)(B)(ii)(I) (42 U.S.C. 1395ww(d)(5)(B)(ii)(I)), 1886(d)(B)(5)(ii)(II) (42 U.S.C.1395ww(d)(5)(B)(ii)(II)), and 1886(d)(5)(F)(i) (42 U.S.C. 1395ww)(d)(5)(F)(i)) of the Social Security Act are each amended by striking "1989" and inserting in lieu thereof "1990".

Subpart II—Provisions Affecting Medicare Parts A and B

SEC. 4011. PAYMENT CYCLE STANDARDS.

(a) PAYMENT FLOOR STANDARDS.—

(1) Section 1816(c) of the Social Security Act (42 U.S.C. 1395h(c)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) Each agreement under this section shall provide that no payment shall be issued, mailed, or otherwise transmitted

with respect to any claim submitted under this title within the applicable number of calendar days after the date on which the claim is received.

"(B) In this paragraph, the term 'applicable number of calendar days' means—

"(i) with respect to claims received in the 3-month period beginning July 1, 1988, 10 days,

"(ii) with respect to claims received in the 12-month period beginning October 1, 1988, 11 days, and

"(iii) with respect to claims received in the 12-month period beginning October 1, 1989, 12 days.".

(2) Section 1842(c) of such Act (42 U.S.C. 1395u(c)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this title within the applicable number of calendar days after the date on which the claim is received.

"(B) In this paragraph, the term 'applicable number of calendar days' means—

"(i) with respect to claims received in the 3-month period beginning July 1, 1988, 10 days,

"(ii) with respect to claims received in the 12-month period beginning October 1, 1988, 11 days, and

"(iii) with respect to claims received in the 12-month period beginning October 1, 1989, 12 days.".

(3)(A) The amendments made by paragraphs (1) and (2) shall apply to claims received on or after July 1, 1988.

(B) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act and contracts under section 1842 of such Act, and regulations, to such extent as may be necessary to implement the provisions of this subsection on a timely basis.

(b) PROMPT PAYMENT FOR COMPREHENSIVE OUTPATIENT REHABILITATION FACILITIES.—

(1) Section 1816(c)(2)(C) of such Act (42 U.S.C. 1395h(c)(2)(C)) is amended by striking "or hospice program" and inserting in lieu thereof "hospice program, comprehensive outpatient rehabilitation facility, or rehabilitation agency".

(2)(A) The amendment made by paragraph (1) shall apply to claims received on or after the date of enactment of this Act.

(B) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816, and regulations, to such extent as may be necessary to implement the amendment made by paragraph (1).

(c) BUDGET CONSIDERATIONS.—For purposes of section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, this section is a necessary (but secondary) result of a significant policy change.

SEC. 4012. MEDICARE CONTRACTORS.

(a) MEDICARE CONTRACTOR BUDGET.—

(1) Section 1816(c)(1) of the Social Security Act (42 U.S.C. 1395h(c)(1)) is amended by adding at the end thereof the following new sentence: "The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for fiscal intermediaries under this section for that fiscal year.".

(2) Section 1842(c)(1) of such Act (42 U.S.C. 1395u(c)(1)) is amended by adding at the end thereof the following new sentence: "The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for carriers under this section for that fiscal year.".

(3) The amendments made by paragraphs (1) and (2) shall become effective on the date of enactment of this Act and shall apply to budgets for fiscal years beginning with fiscal year 1989.

(b) PAYMENT SAFEGUARDS.—

(1) Section 118 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 355), as amended by section 9216(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by striking "and $105,000,000 for each of fiscal years 1986, 1987, and 1988" and inserting in lieu thereof "$105,000,000 for each of fiscal years 1986 and 1987, $205,000,000 for fiscal year 1988, and $100,000,000 for each of fiscal years 1989 and 1990".

(2) The amendment made by paragraph (1) shall apply with respect to fiscal years beginning with fiscal year 1988.

(c) PROHIBITION AGAINST DENIAL QUOTAS.—

(1) Section 1816(f) of such Act (42 U.S.C. 1395h(f)) is amended in the second sentence by inserting "or solely on the basis of any specified numerical ratio of amounts that must be saved through denial of claims under utilization review to amounts expended with respect to such review" before the period.

(2) Section 1842(b)(2) of such Act (42 U.S.C. 1395u(b)(2)) is amended by inserting at the end thereof the following: "No carrier shall be found under such standards and criteria not to be efficient or effective or to be less efficient or effective solely on the basis of any specified numerical ratio of amounts that must be saved through denial of claims under utilization review to amounts expended with respect to such review.".

(3) Nothing in the amendments made by paragraphs (1) and (2) shall be construed to limit the authority of the Secretary of Health and Human Services under the law in effect on the date of enactment of this Act to—

(A) ascertain the accuracy of decisions (including medical review decisions) made by a fiscal intermediary under section 1816 of the Social Security Act or a carrier under section 1842 of such Act;

(B) prescribe standards for measuring the performance of any such fiscal intermediary or carrier; or

(C) refuse to renew (or to conditionally renew) the agreement of any such fiscal intermediary or the contract of any such carrier for failing to meet such standards.

SEC. 4013. SECONDARY PAYER PROVISIONS.

(a) APPLICATION OF SECONDARY PAYER PROVISIONS TO GOVERNMENTAL ENTITIES.—

(1) Section 1862(b)(4)(B)(i) of the Social Security Act (42 U.S.C. 1395y(b)(4)(B)(i)) is amended by striking "section 5000(b) of the Internal Revenue Code of 1986" and inserting in lieu thereof "subsection (b) of section 5000 of the Internal Revenue Code of 1986 without regard to subsection (d) of such section".

(2) The amendment made by paragraph (1) shall apply to items and services furnished on or after January 1, 1987.

(b) PRIMARY PAYER REQUIREMENT WITH RESPECT TO END STAGE RENAL DISEASE.—

(1) Section 1862(b)(2)(A) of such Act (42 U.S.C. 1395y(b)(2)(A)) is amended by striking "(ii)" and all that follows through the period and inserting in lieu thereof "(ii) can reasonably be expected to be made under such plan.".

(2) The amendment made by paragraph (1) shall apply to items and services furnished on or after the date of enactment of this Act.

SEC. 4014. EXTENSION OF REDUCTIONS UNDER SEQUESTER ORDER.

Notwithstanding any other provision of law (including any other provision of this Act), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on November 20, 1987, pursuant to section 252(b) of the Balanced Budget Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through—

(1) December 31, 1987, with respect to all such payments; and

(2) January 15, 1987, with respect to payments for physicians' services and durable medical equipment (and other nonphysician services reimbursed on a reasonable charge basis) under part B of such title.

Subpart III—Provisions Affecting Medicare Part B

SEC. 4021. PHYSICIAN PAYMENTS.

(a) THREE-MONTH FREEZE ON INCREASES IN PHYSICIAN PAYMENTS.—

(1) Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended—

(A) in subsection (b)(4)—

(i) in subparagraph (A), by adding at the end thereof the following new clause:

"(vi) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 3-month period beginning January 1, 1988, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning January 1, 1987.",

(ii) in subparagraph (B), by adding at the end thereof the following new clause:

"(iii) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 3-month period beginning January 1, 1988, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning January 1, 1987.",

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

"(F) For purposes of this part, with respect to physicians' services furnished in 1988 on or after April 1, the percentage increase in the MEI is—

"(i) the full amount of the percentage increase in the MEI for 1988 for primary services (as defined in subparagraph (E)(iii)), and

"(ii) 0 percent for other physicians' services.",

(iv) in subparagraph (E), by adding at the end thereof the following new clause:

"(iii) The term 'primary care services' means physicians' services which constitute office medical services, emergency department services, home medical services, skilled nursing, intermediate care, and long-term care medical services, or nursing home, boarding home, domiciliary, or custodial care medical services (as defined by procedure code by the Secretary).''; and

(B) in subsection (j)(1)(C), by adding at the end thereof the following new clause:

"(vii) Notwithstanding any other provision of this subparagraph, the maximum allowable actual charge for a particular physicians' service furnished by a nonparticipating physician to individuals enrolled under this part during the 3-month period beginning on January 1, 1988, shall be the amount determined under this subparagraph for 1987. The maximum allowable actual charge for any such service otherwise determined under this subparagraph for 1988 shall take effect on April 1, 1988.".

(2) Notwithstanding any other provision of law—

(A) subject to the last sentence of this paragraph, each agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act shall remain in effect for the three-month period beginning on January 1, 1988; and

(B) the effective period for agreements under such section entered into for 1988 shall be the nine-month period beginning on April 1, 1988, and the Secretary shall provide an opportunity for physicians to enroll as participating physicians prior to April 1, 1988.

An agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act shall not remain in effect for the period described in subparagraph (A) if the participating physician requests that the agreement be terminated.

(3) Section 9332(a)(4)(C) of the Omnibus Budget Reconciliation Act of 1986 is amended—

(A) by striking "April" and inserting in lieu thereof "July"; and

(B) by striking "at the end of 1987" and inserting in lieu thereof "prior to April 1, 1988".

(b) PAYMENT INCREASE FOR SERVICES FURNISHED IN UNDERSERVED RURAL AREAS.—

(1) Section 1833 of such Act (42 U.S.C. 1395l) is amended by adding at the end thereof the following new subsection:

"(m) In the case of services furnished—

"(1) on an assignment-related basis,

"(2) to an individual who is covered under the insurance program established by this part and who incurs expenses for such services,

"(3) by a physician in a rural area (as defined in section 1886(d)(2)(D)) that is designated, under section 332 of the Public Health Service Act, as a health manpower shortage area,

in addition to the amount otherwise paid under this part, there also shall be paid to the physician (on a monthly or quarterly basis) from the Federal Supplementary Medical Insurance Trust Fund an amount equal to 5 percent of such amount.".

(2) The amendment made by paragraph (1) shall apply with respect to services furnished on or after January 1, 1989.

(c) CUSTOMARY CHARGES FOR NEW PHYSICIANS.—

(1) Section 1842(b)(4) of such Act, as amended by subsection (a)(1), is further amended by adding at the end thereof the following new subparagraph:

"(G) In determining the customary charges for physicians' services (other than services furnished in a rural area (as defined in section 1886(d)(2)(D)) that is designated, under section 332 of the Public Health Service Act, as a health manpower shortage area) for which adequate data are not available because a physician has not yet been in practice for a sufficient period of time, the Secretary shall set a customary charge at a level no higher than 80 percent of the prevailing charge (as determined under the third and fourth sentences of paragraph (3)) for a service.".

(2) The amendment made by paragraph (1) shall apply to physicians who first furnish services to medicare beneficiaries after January 1, 1988.

(d) REDUCTION IN PREVAILING CHARGE LEVEL FOR OVERPRICED PROCEDURES.—

(1) Section 1842(b) of such Act (42 U.S.C. 1395u(b)) is amended by adding at the end thereof the following new paragraph:

"(13)(A)(i) In determining the reasonable charge under paragraph (3) for any of the procedures described in subparagraph (C), the prevailing charge for any such procedure otherwise recognized for participating and nonparticipating physicians shall be reduced by the applicable percentage with respect to procedures performed in 1988. A reduced prevailing charge under this subparagraph shall become the prevailing charge level for purposes of applying the economic index under the fourth sentence of paragraph (3) for subsequent years.

"(ii) The applicable percentage specified in this clause is—

"(I) in the case of a prevailing charge that is at least 150 percent of the weighted national average (as determined by the Secretary) of such prevailing charges for such procedure for all localities in the United States for 1987, 15 percent;

"(II) in the case of a prevailing charge that does not exceed 100 percent of such average, 0 percent; and

"(III) in the case of any other prevailing charge, a percentage between 0 and 15 determined on the basis of a straight-line sliding scale (as determined by the Secretary).

"(C) The procedures described in this subparagraph are cataract extraction with intraocular lens implant, intraocular lens insertion, coronary artery bypass surgery, total hip replacement, suprapubic prostatectomy, transurethral resection of the prostate, diagnostic dilation and curettage, pacemaker surgery, and carpal tunnel release.

"(D)(i) In the case of a reduction in the reasonable charge for a physician's service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part after the effective date of such reduction (subject to clause (iv)), the physician may not charge the individual more than the limiting charge (as defined in clause (ii)) plus (for services furnished during the 9-month period beginning on April 1, 1988), ½ of the amount by which the physician's maximum allowable actual charge for the service for the 12-month period ending on December 31, 1987, exceeds the limiting charge.

"(ii) In clause (i), the term 'limiting charge' means, with respect to a service, 125 percent of the prevailing charge for the service after the reduction under subparagraph (A).

"(iii) If a physician knowingly and willfully imposes a charge in violation of clause (i), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

"(iv) This subparagraph shall not apply to services furnished after the earlier of (I) December 31, 1990, or (II) one year after the date the Secretary reports to the Congress, under section 1845(e)(3), on the development of a relative value scale under section 1845.".

(2) The amendments made by paragraph (1) shall apply to procedures performed on or after April 1, 1988.

(e) CHANGES IN APPLICATION OF MAXIMUM ALLOWABLE ACTUAL CHARGE.—

(1) In the case of a physician who did not have actual charges under title XVIII of the Social Security Act for a procedure in the calendar quarter beginning on April 1, 1984, but who establishes to the satisfaction of the carrier that he had actual charges (whether under title XVIII of such Act or otherwise) for the procedure performed during any calendar quarter beginning during the 12-month period ending March 31, 1984, the carrier shall compute the maximum allowable actual charge under section 1842(j) of the Social Security Act for such procedure performed by such physician in 1988 based on the physician's actual charges for the procedure for the most recent calendar quarter (to begin during such period) for which the physician has actual charges.

(2) To the extent feasible, for the purpose of determining whether a uniform maximum allowable actual charge under section 1842(j) of the Social Security Act may be applied to a group practice—

(A) in the case of a multi-specialty group practice, in order to qualify for a group MAAC the charges must be uniform within each specialty, but to not necessarily have to be uniform across specialties; and

(B) in the case of hospital departmental practice plans, each department shall be treated separately.

(3) Paragraphs (1) and (2) shall take effect on April 1, 1988.

(f) DATE FOR APPLYING CIVIL PENALITIES FOR IMPROPER USE OF ASSISTANTS IN PERFORMING CATARACT SURGERY.—

(1) Section 1842(k) of such Act (42 U.S.C. 1395u(k)) is amended in paragraphs (1) and (2) by striking "(j)(2)" each place it appears and inserting in lieu thereof "(j)(2) in the case of surgery performed on or after March 1, 1987".

(2) The amendment made by paragraph (1) shall be effective as if included in section 9307(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(g) ASSISTANTS AT CATARACT SURGERY.—

(1) Section 1862(a)(15) of such Act (42 U.S.C. 1395y(a)(15)) is amended—

(A) by striking "the" the second place it appears and inserting in lieu thereof "(A) the"; and

(B) by striking the semicolon and inserting in lieu thereof the following: ", or (B) such organization and the appropriate carrier under such section have determined that the use of the assistant is necessary to perform a surgical technique of established economic benefit (taking into account the cost of the assistant) that eliminates the need for an anesthesiologist or nurse anesthetist;".

(2) The amendment made by paragraph (1) shall apply with respect to services furnished on or after the date of enactment of this Act.

(h) UTILIZATION SCREENS FOR PHYSICIAN SERVICES PROVIDED TO PATIENTS IN REHABILITATION HOSPITALS.—

(1) The Secretary of Health and Human Services shall establish (in consultation with appropriate physician groups, including those representing rehabilitative medicine) a separate utilization screen for physician visits to patients in rehabilitation hospitals and rehabilitative units (and patients in long-term care hospitals receiving rehabilitation services) to be used by carriers under section 1842 of the Social Security Act in performing functions under subsection (a) of such section related to the utili-

zation practices of physicians in such hospitals and units.

(2) Not later than 12 months after the date of enactment of this Act, the Secretary of Health and Human Services shall take appropriate steps to implement the utilization screen established under paragraph (1).

(i) COLLECTION OF PAST-DUE AMOUNTS OWED BY PHYSICIANS WHO BREACHED CONTRACTS UNDER THE NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP PROGRAM.—

(1)(A) Title XVIII of such Act is amended by adding at the end thereof the following new section:

"OFFSET OF PAYMENTS TO PHYSICIANS TO COLLECT PAST-DUE OBLIGATIONS ARISING FROM BREACH OF SCHOLARSHIP CONTRACT

"SEC. 1891. (a) IN GENERAL.—

"(1) The Secretary shall enter into an agreement under this section with any physician who, by reason of a breach of a contract entered into by such physician pursuant to the National Health Service Corps Scholarship Program, owes a past-due obligation to the United States (as defined in subsection (b)).

"(2) The agreement under this section shall provide that—

"(A) deductions shall be made from the amounts otherwise payable to the physician under this title or under a State plan approved under title XIX, in accordance with a formula and schedule agreed to by the Secretary and the physician, until such past-due obligation (and accrued interest) have been repaid;

"(B) payment under this title for services provided by such physician shall be made only on an assignment-related basis; and

"(C) if the physician does not provide services, for which payment would otherwise be made under this title or a State plan approved under title XIX, of a sufficient quantity to maintain the offset collection according to the agreed upon formula and schedule, or if the physician refuses to enter into an agreement or breaches any provision of the agreement—

"(i) the Secretary shall immediately inform the Attorney General, and the Attorney General shall immediately commence an action to recover the full amount of the past-due obligation, and

"(ii) subject to paragraph (3), the Secretary shall immediately bar the physician from the program under this title and from any State program of medical assistance under title XIX of this Act, until such time as the entire past-due obligation has been repaid.

"(3) The Secretary shall not bar a physician pursuant to paragraph (2)(C)(ii) if such physician is a sole community physician or sole source of essential specialized services in a community.

"(b) PAST-DUE OBLIGATION.—For purposes of this section, a past-due obligation is any amount—

"(1) owed by a physician to the United States by reason of a breach of a scholarship contract under section 338D of the Public Health Service Act, and

"(2) which has not been paid by the deadline established by the Secretary pursuant to section 338D of the Public Health Service Act, and has not been canceled, waived, or suspended by the Secretary pursuant to such section.

"(c) COLLECTION UNDER THIS SECTION SHALL NOT BE EXCLUSIVE.—This section shall not preclude the United States from applying other provisions of law otherwise applicable to the collection of obligations owed to the United States, including (but not limited to) the use of tax refund offsets pursuant to section 3720A of title 31, United States Code, and the application of other procedures provided under chapter 37 of title 31, United States Code.

"(d) COLLECTION FROM PROVIDERS AND HEALTH MAINTENANCE ORGANIZATIONS.—

"(1) In the case of a physician who owes a past-due obligation, and who is an employee of a provider having an agreement under section 1866 or a health maintenance organization or competitive medical plan having a contract under section 1876, the Secretary shall deduct the amount of such past-due obligation from amounts otherwise payable under this title to such provider, organization, or plan.

"(2) Such deduction shall not be made until 6 months after the Secretary notifies the provider, organization, or plan of the amount to be deducted and the particular physicians to whom the deductions are attributable.

"(3) A deduction made under this subsection shall relieve the physician of the obligation (to the extent of the amount collected) to the United States, but the provider, organization, or plan shall have a right of action to collect from such physician the amount deducted pursuant to this subsection (including accumulated interest).

"(4) No deduction shall be made under this subsection if, within the 6-month period after notice is given to the provider, organization, or plan, the physician pays the past-due obligation, or ceases to be employed by the provider, organization, or plan.

"(5) The Secretary shall also apply the provisions of this subsection in the case of a physician who is a member of a group practice, if such group practice submits bills under this program as a group, rather than by individual physicians.

"(e) NOTIFICATION TO AND AGREEMENT WITH STATE MEDICAID AGENCIES.—The Secretary shall notify each State agency which administers a State plan approved under title XIX of the name of each physician who owes a past-due obligation. If such physician receives any payments, or is employed by an entity which receives any payments, under a State plan, the Secretary shall enter into an agreement with such State under which amounts otherwise payable under the State plan to such physician or the employing entity will be deducted in accordance with the formula and schedule agreed to under subsection (a), or as provided in subsection (d). Deductions made by the State shall be made only from the Federal share of the amount otherwise payable to the physician or employing entity, and the amount otherwise payable to the State under section 1903 shall be reduced accordingly pursuant to section 1903(c).

"(f) TRANSFER FROM TRUST FUNDS.—Amounts equal to the amounts deducted pursuant to this section shall be transferred from the Trust Fund from which the payment to the physician, provider, or other entity would otherwise have been made, to the general fund in the Treasury, and shall be credited as payment of the past-due obligation of the physician from whom (or with respect to whom) the deduction was made.".

(B) The amendment made by subparagraph (A) shall become effective on the date of the enactment of this Act.

(2)(A) Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(i) by striking out "and" at the end of paragraph (46);

(ii) by striking out the period at the end of paragraph (47) added by section 9407(a) of the Omnibus Budget Reconciliation Act of 1986 and inserting a semicolon and transferring and inserting such paragraph after paragraph (46);

(iii) by striking the period at the end of the paragraph (47) added by section 11005(b) of the Anti-Drug Abuse Act of 1986 and inserting "; and", by redesignating such paragraph as paragraph (48), and by transferring and inserting such paragraph after paragraph (47); and

(iv) by inserting after paragraph (48) the following new paragraph:

"(49) provide that the State shall make deductions, as specified by the Secretary pursuant to section 1891(e), from the Federal share of amounts otherwise payable to physicians for services furnished under the State plan.".

(B) Section 1903 of such Act (42 U.S.C. 1396b) is amended by inserting after subsection (b) the following new subsection:

"(c) The amount otherwise payable under subsection (a) to a State shall be reduced by the amount of any reductions in payments to physicians made by the State pursuant to section 1902(a)(49). An amount equal to the amount of the reduction in payment under this subsection shall be credited by the Secretary as repayment of past-due obligations under section 338D of the Public Health Service Act by the physicians from whom, or with respect to whom, the payments were offset.".

(C)(i) Except as provided in clause (ii), the amendments made by this paragraph shall apply to calendar quarters beginning after the date of the enactment of this Act.

(ii) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this paragraph, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(3)(A) Section 338D(b)(1) of the Public Health Service Act (42 U.S.C. 254o(b)(1)) is amended by adding at the end thereof the following new sentence: "Amounts not paid within such period shall be subject to collection through deductions in Medicare and Medicaid payments pursuant to section 1891 and 1902(a)(49) of the Social Security Act.".

(B) Section 338D(c)(3) of such Act (42 U.S.C. 254o(c)(3)) is amended to read as follows:

"(3) Any obligation of an individual under the Scholarship Program (or a contract thereunder) for payment of damages may not be released by a discharge in bankruptcy under title 11 of the United States Code.".

(C)(i) The amendment made by subparagraph (A) shall become effective on the date of the enactment of this Act.

(ii) The amendment made by subparagraph (B) shall apply with respect to damages arising from contracts entered into after the date of the enactment of this Act.

(j) STUDY OF PREVAILING CHARGES FOR ANESTHESIA SERVICES.—The Secretary of Health and Human Services shall conduct a study of the variations in conversion factors used by carriers under section 1842(b) of the Social Security Act to determine the pre-

vailing charge for anesthesia services and shall report the results of the study and make recommendations for appropriate adjustments in such factors not later than January 1, 1989.

(k) CHANGE IN DATE FOR ANNUAL REPORT OF PHYSICIAN PAYMENT REVIEW COMMISSION.—

(1) Section 1845(b)(1) of such Act (42 U.S.C. 1395w-1(b)(1)) is amended by striking "March" and inserting in lieu thereof "May".

(2) The amendment made by paragraph (1) shall apply with respect to reports for years after 1987.

SEC. 4022. PAYMENTS TO HOSPITAL OUTPATIENT DEPARTMENTS FOR RADIOLOGY.

(a) AMOUNTS PAYABLE.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended—

(1) in subsection (a)(2)—

(A) by striking "and" in subparagraph (C),

(B) by adding "and" at the end of subparagraph (D), and

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

"(E) with respect to outpatient hospital radiology services (including diagnostic and therapeutic radiology, nuclear medicine and CAT scan procedures), the amount determined under subsection (m);"; and

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

"(m)(1)(A) The aggregate amount of the payments to be made in a cost reporting period under this part for services described in subsection (a)(2)(E) shall be equal to the sum of:

"(i) the lesser of—

"(I) the amount determined with respect to such services under subsection (a)(2)(B) excluding amounts for capital associated with services described in subsection (a)(2)(E) or

"(II) the blend amount for radiology services determined in accordance with subparagraph (B); and

"(ii) amounts for capital associated with services described in subsection (a)(2)(E).

"(B)(i) The blend amount for radiology services for a cost reporting period is the sum of:

"(I) the cost proportion (as defined in clause (ii)(I)) of the amount described in subparagraph (A)(i)(I); and

"(II) the charge proportion (as defined in clause (ii)(II)) of 62 percent of 80 percent of the prevailing charge for participating physicians for the same radiology services as if they were furnished in a physician's office in the same locality as determined under section 1842(b).

"(ii) In this subparagraph:

"(I) The term 'cost proportion' means 65 percent for cost reporting periods beginning in fiscal year 1989 and 50 percent for other cost reporting periods.

"(II) The term 'charge proportion' means 35 percent for cost reporting periods beginning in fiscal year 1989 and 50 percent for other cost reporting periods.".

(b) CONFORMING AMENDMENT.—Section 1833(a)(2)(B) of such Act (42 U.S.C. 1395l(a)(2)(B)) is amended in the matter preceding clause (i) by striking "(C) or (D)" and inserting in lieu thereof "(C), (D), or (E)".

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to cost reporting periods beginning on or after October 1, 1988.

SEC. 4023. PART B PREMIUM.

Section 1839 of the Social Security Act (42 U.S.C. 1395r) is amended—

(1) in subsection (e), by striking "1989" each place it appears and inserting in lieu thereof "1990";

(2) in subsection (f)(1), by striking "or 1987" and inserting in lieu thereof "1987, or 1988"; and

(3) in subsection (f)(2), by striking "or 1988" and inserting in lieu thereof "1988, or 1989".

SEC. 4024. COVERAGE OF MENTAL HEALTH SERVICES.

(a) OUTPATIENT SERVICES UNDER PART B.—Section 1833(c) of the Social Security Act (42 U.S.C. 1395l(c)) is amended—

(1) by striking "$312.50" and inserting in lieu thereof "$1375.00"; and

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

"For purposes of this subsection, the term 'treatment' does not include brief office visits (as defined by the Secretary) for the sole purpose of prescribing or monitoring prescription drugs used in the treatment of such disorders.".

(b) PARTIAL HOSPITALIZATION COVERAGE.—

(1) Section 1861(s)(2)(B) of such Act (42 U.S.C. 1395x(s)(2)(B)) is amended by inserting "and partial hospitalization services incident to such services" before the semicolon.

(2) Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"(ff)(1) The term 'partial hospitalization services' means the items and services described in paragraph (2) prescribed by a physician and provided under a program described in paragraph (3) under the supervision of a physician pursuant to an individualized, written plan of treatment established and periodically reviewed by a physician (in consultation with appropriate staff participating in such program), which plan sets forth the physician's diagnosis, the type, amount, frequency, and duration of the items and services provided under the plan, and the goals for treatment under the plan.

"(2) The items and services described in this paragraph are—

"(A) individual and group therapy with physicians or psychologists (or other mental health professionals to the extent authorized under State law),

"(B) occupational therapy requiring the skills of a qualified occupational therapist,

"(C) services of social workers, trained psychiatric nurses, and other staff trained to work with psychiatric patients,

"(D) drugs and biologicals furnished for therapeutic purposes (which cannot, as determined in accordance with regulations, be self-administered),

"(E) individualized activity therapies that are not primarily recreational or diversionary,

"(F) family counseling (the primary purpose of which is treatment of the individual's condition),

"(G) patient training and education (to the extent that training and educational activities are closely and clearly related to individual's care and treatment),

"(H) diagnostic services, and

"(I) such other items and services as the Secretary may provide (but in no event to include meals and transportation);

that are reasonable and necessary for the diagnosis or active treatment of the individual's condition, reasonably expected to improve or maintain the individual's condition and functional level and to prevent relapse or hospitalization, and furnished pursuant to such guidelines relating to frequency and duration of services as the Secretary shall by regulation establish (taking into account accepted norms of medical practice and the reasonable expectation of patient improvement).

"(3) A program described in this paragraph is a hospital-based or hospital-affiliated program which is a distinct and organized intensive ambulatory treatment service offering less than 24-hour-daily care.".

(3) Section 1835(a)(2) of such Act (42 U.S.C. 1395n(a)(2)) is amended—

(A) by striking "and" at the end of subparagraph (D);

(B) by striking the period at the end of subparagraph (E) and inserting "; and"; and

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

"(F) in the case of partial hospitalization services, (i) the individual would require inpatient psychiatric care in the absence of such services, (ii) an individualized, written plan for furnishing such services has been established by a physician and is reviewed periodically by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician.".

(4) Section 1833(c) of such Act, as amended by subsection (a), is further amended at the end thereof by inserting "or partial hospitalization services that are not directly provided by a physician" before the period.

(c) EFFECTIVE DATE; IMPLEMENTATION.—

(1) The amendments made by subsection (a) shall apply with respect to calendar years beginning on or after January 1, 1988.

(2)(A) The amendments made by subsection (b) shall become effective on the date of enactment of this Act.

(B) The Secretary of Health and Human Services shall implement the amendments made by subsection (b) so as to ensure that there is no additional cost to the medicare program by reason of such amendments.

SEC. 4025. RETURN ON EQUITY PAYMENTS TO OUTPATIENT DEPARTMENTS.

(a) IN GENERAL.—Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) is amended by adding at the end thereof the following new subparagraph:

"(S) Such regulations shall not include provision for specific recognition of any return on equity capital with respect to hospital outpatient departments.".

(b) CONFORMING AMENDMENT.—Section 1881(b)(2)(C) of the Social Security Act (42 U.S.C. 1395rr(b)(2)(C)) is amended by striking "facilities" and inserting in lieu thereof "facilities (other than hospital outpatient departments)".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on January 1, 1988.

SEC. 4026. UPDATING MAXIMUM RATE OF PAYMENT PER VISIT FOR INDEPENDENT RURAL HEALTH CLINICS.

(a) IN GENERAL.—

(1) Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended by inserting after subsection (e) the following new subsection:

"(f) With respect to any year after 1988, in establishing a limit under subsection (a)(3) on payment for rural health clinic services provided by independent rural health clinics, the Secretary shall adjust the limit established under this subsection for the previous year increased by the percentage increase in an index developed by the Secretary that takes into account economic data and the actual costs of furnishing rural health clinic services.".

(2) Section 1833 of such Act, as added by paragraph (1), is amended—

(A) by inserting "(1)" after "(f)"; and

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

"(2) Notwithstanding any other provision of this section, such limit in 1988 shall be $46.".

(b) CONTINGENT EFFECTIVE DATE.—

(1) Subject to paragraph (2), the amendment made by subsection (a) shall become effective 120 days after the date of enactment of this Act.

(2) The amendment made by subsection (a)(2) shall not become effective if (and shall be null and void) the Secretary of Health and Human Services, prior to the date described in paragraph (1), updates the payment limit under title XVIII of the Social Security Act for services with respect to which such amendment applies to account for increases in practice costs occurring since the date on which such limit was last changed.

SEC. 4027. COVERAGE OF CERTIFIED NURSE-MIDWIFE SERVICES UNDER PART B OF MEDICARE.

(a) COVERAGE OF SERVICES.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking "and" at the end of subparagraph (J);

(2) by adding "and" at the end of subparagraph (K); and

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

"(L) certified nurse-midwife services;".

(b) PAYMENT OF BENEFITS.—

(1) Section 1832(a)(2)(B) of such Act (42 U.S.C. 1395k(a)(2)(B)) is amended—

(A) by striking "and" at the end of clause (ii);

(B) by striking the semicolon at the end of clause (iii) and inserting in lieu thereof a comma; and

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

"(iv) certified nurse-midwife services; and".

(2) Section 1833(a)(1) of such Act (42 U.S.C. 1395k(a)(1)) is amended—

(A) by striking "and" at the end of subparagraph (F);

(B) by striking "services; and" in subparagraph (G) and inserting in lieu thereof "services,";

(C) by adding "and" at the end of subparagraph (H); and

(D) by adding at the end thereof the following new subparagraph: "(I) with respect to certified nurse-midwife services under section 1861(s)(2)(L), the amounts paid shall be the amount determined by a fee schedule established by the Secretary for the purposes of this subparagraph (but in no event more than 75 percent of the prevailing charge that would be allowed for the same service performed by a physician);".

(c) DEFINITION.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"Certified Nurse-Midwife Services

"(ff)(1) The term 'certified nurse-midwife services' means services furnished by a certified nurse-midwife (as defined in paragraph (2)) which the certified nurse-midwife is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the certified nurse-midwife is under the supervision of, or associated with, a physician or other health care provider.

"(2) The term 'certified nurse-midwife' means a registered nurse who has successfully completed a program of study and clinical experience meeting guidelines prescribed by the Secretary, or has been certified by an organization recognized by the Secretary, and performs services in the area of management of the care of mothers and babies throughout the maternity cycle.".

(c) CONFORMING CHANGES.—

(1) Section 1905(a)(17) of such Act (42 U.S.C. 1396d(a)(17)) is amended by striking "as defined in subsection (m)" and inserting in lieu thereof "as defined in section 1861(ff)".

(2) Section 1905 of such Act (42 U.S.C. 1396d) is amended by striking subsection (m).

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to services performed on or after July 1, 1988.

SEC. 4028. PSYCHOLOGIST SERVICES IN CLINICS.

(a) COVERAGE OF PSYCHOLOGISTS' SERVICES FURNISHED AT RURAL HEALTH CLINICS.—

(1) Section 1861(aa)(1)(B) of the Social Security Act (42 U.S.C. 1395x(aa)(1)(B)) is amended by striking "physician assistant or by a nurse practitioner" and inserting in lieu thereof "physician assistant or a nurse practitioner (as defined in paragraph (3)), or by a clinical psychologist (as defined by the Secretary),".

(2) The amendment made by paragraph (1) shall be effective with respect to services furnished on or after the date of enactment of this Act.

(b) DIRECT PAYMENT FOR PSYCHOLOGISTS' SERVICES FURNISHED AT A COMMUNITY MENTAL HEALTH CENTER.—

(1) Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(A) by striking "and" at the end of subparagraph (J);

(B) by adding "and" at the end of subparagraph (K); and

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

"(L) qualified psychologist services;".

(2) Section 1832(a)(2)(B) of such Act (42 U.S.C. 1395k(a)(2)(B)) is amended—

(A) by striking "and" at the end of clause (ii);

(B) by striking the semicolon in clause (iii) and inserting in lieu thereof a comma; and

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

"(iv) qualified psychologist services; and".

(3) Section 1833(a)(1) of such Act (42 U.S.C. 1395k(a)(1)) is amended—

(A) by striking "and" at the end of subparagraph (F);

(B) by striking "services; and" in subparagraph (G) and inserting in lieu thereof "services,";

(C) by adding "and" at the end of subparagraph (H); and

(D) by adding at the end thereof the following new subparagraph: "(I) with respect to qualified psychologist services under section 1861(s)(2)(L), the amounts paid shall be the amount determined by a fee schedule established by the Secretary for the purposes of this subparagraph;".

(4) Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"Qualified Psychologist Services

"(ff) The term 'qualified psychologist services' means services furnished by a clinical psychologist (as defined by the Secretary) at a community mental health center (as such term is used in the Public Health Service Act) which the psychologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law)."

(5) The amendments made by this subsection shall be effective with respect to services performed on or after January 1, 1988.

SEC. 4029. PAYMENT FOR THERAPEUTIC SHOES FOR INDIVIDUALS WITH SEVERE DIABETIC FOOT DISEASE.

(a) COVERAGE UNDER PART B.—Section 1861(s) of the Social Security Act (42 U.S.C. 1395x(s)) is amended—

(1) by redesignating paragraphs (12) through (15) as paragraphs (13) through (16), respectively,

(2) by striking out "and" at the end of paragraph (10),

(3) by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and", and

(4) by inserting after paragraph (11) the following new paragraph:

"(12) extra-depth shoes with inserts or custom molded shoes for an individual with diabetes, if—

"(A) the physician who is managing the individual's diabetic condition (i) documents that the individual has peripheral neuropathy with evidence of callus formation, a history of pre-ulcerative calluses, a history of previous ulceration, foot deformity, or previous amputation, or poor circulation, and (ii) certifies that the individual needs such shoes under a comprehensive plan of care related to the individual's diabetic condition;

"(B) the particular type of shoes are prescribed by a podiatrist or other qualified physician (as established by the Secretary); and

"(C) the shoes are fitted and furnished by a podiatrist or other qualified individual (such as a pedorthist or orthotist, as established by the Secretary) who is not the physician described in subparagraph (A) (unless the Secretary finds that the physician is the only such qualified individual in the area).".

(b) LIMITATION ON BENEFIT.—Section 1833 of such Act (42 U.S.C. 1395) is amended by inserting after subsection (e) the following new subsection:

"(f)(1) In the case of shoes described in section 1861(s)(12)—

"(A) no payment may be made under this part for the furnishing of more than one pair of shoes for any individual for any calendar year, and

"(B) with respect to expenses incurred in any calendar year, no more than the limit established under paragraph (2) shall be considered as incurred expenses for purposes of subsections (a) and (b).

Payment for shoes under this part shall be considered to include payment for any expenses for the fitting of such shoes.

"(2)(A) Except as provided by the Secretary under subparagraphs (B) and (C), the limit established under this paragraph—

"(i) for the furnishing of one pair of custom molded shoes is $300;

"(ii) for the furnishing of extra-depth shoes and inserts is—

"(I) $100 for the pair of shoes itself, and

"(II) $50 for inserts for a pair of shoes.

"(B) The Secretary or a carrier may establish limits for shoes that are lower than the limits established under subparagraph (A) if the Secretary finds that shoes and inserts of an appropriate quality are readily available at or below such lower limits.

"(C) For each year after 1988, each dollar amount under subparagraph (A) or (B) (as previously adjusted under this subpara-

graph) shall be increased by the same percentage increase as the Secretary provides with respect to durable medical equipment for that year, except that if such increase is not a multiple of $1, it shall be rounded to the nearest multiple of $1.

"(3) In this title, the term 'shoes' includes, except for purposes of subparagraphs (A)(ii) and (B) of paragraph (2), inserts for extra-depth shoes.".

(c) MODIFICATION OF EXCLUSION.—Section 1862(a)(8) of such Act (42 U.S.C. 1395y(a)(8)) is amended by inserting ", other than shoes furnished pursuant to section 1861(s)(12)" before the semicolon.

(d) CONFORMING AMENDMENTS.—Sections 1864(a), 1865(a), 1902(a)(9)(C), and 1915(a)(1)(B)(ii)(I) of such Act (42 U.S.C. 1395aa(a), 1395bb(a), 1396a(a)(9)(C), 1396n(a)(1)(B)(ii)(I)) are each amended by striking out "paragraphs (12) and (13)" and inserting in lieu thereof "paragraphs (13) and (14)".

(e) CONTINGENT EFFECTIVE DATE; DEMONSTRATION PROJECT.—

(1) The amendments made by this section shall become effective (if at all) in accordance with paragraph (2).

(2)(A) The Secretary of Health and Human Services (in this paragraph referred to as the "Secretary"), shall establish a demonstration project to begin on October 1, 1988, to test the cost-effectiveness of furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section to a sample group of medicare beneficiaries.

(B)(i) The demonstration project under subparagraph (A) shall be conducted for an initial period of 24 months. Not later than October 1, 1990, the Secretary shall report to the Congress on the results of such project. If the Secretary finds, on the basis of existing data, that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is cost-effective, the Secretary shall include such finding in such report, such project shall be discontinued, and the amendments made by this section shall become effective on November 1, 1990.

(ii) If the Secretary determines that such finding cannot be made on the basis of existing data, such project shall continue for an additional 24 months. Not later than April 1, 1993, the Secretary shall submit a final report to the Congress on the results of such project. The amendments made by this section shall become effective on the first day of the first month to begin after such report is submitted to the Congress unless the report contains a finding by the Secretary that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is not cost-effective (in which case the amendments made by this section shall not become effective).

SEC. 4030. DURABLE MEDICAL EQUIPMENT.

(a) PURCHASE OF EQUIPMENT.—Section 1889 of the Social Security Act (42 U.S.C. 1395zz) is amended:

(1) in subsection (a), by striking "In" and all that follows through the final period and inserting in lieu thereof the following: "Durable medical equipment (other than inexpensive equipment, or equipment that the Secretary designates as eligible for long-term rental) furnished by a participating provider (as defined in section 1842(h)(1)) shall be purchased on a lump sum or lease-purchase basis."; and

(2) by striking subsections (c) and (d) and inserting in lieu thereof the following new subsections:

"(c) Purchase of durable medical equipment (other than inexpensive equipment) on a lump sum basis shall be permitted only if the expected duration of the medical need for the equipment warrants a presumption that purchase of the equipment would be less costly than purchase on a lease-purchase basis.

"(d)(1) If payment for durable medical equipment (other than inexpensive equipment) is made in accordance with a lease-purchase agreement on an assignment-related basis, the total amount that may be paid (including coinsurance) may not exceed an amount equal to—

"(A) the reasonable charge on a lump sum basis, plus

"(B) a fair three month rental charge;

and title to the equipment shall pass to the individual if that sum is reached.

"(2) If payment is made for durable medical equipment (including inexpensive equipment) other than as provided by paragraph (1), or other than on a rental basis for equipment that the Secretary designates as eligible for long-term rental, the total amount that may be paid under this title may not exceed 80 percent (except as otherwise provided by subsection (b)) of the reasonable charge on a lump sum basis.

"(e) If a participating supplier (as defined in section 1842(h)(1)) offers for purchase or rental particular durable medical equipment, the supplier shall offer to furnish that equipment (other than inexpensive equipment) to an individual entitled to benefits under this title on a lease-purchase basis if the individual so requests.

"(f) If durable medical equipment is rented on an assignment-related basis, the beneficiary shall be entitled (as part of the terms under the assignment) to use of the equipment (without additional charge to the beneficiary beyond the coinsurance) as long as the equipment is needed.

"(g) For purposes of this section, the term 'inexpensive equipment' means equipment for which the prevailing charge does not exceed $120 (for equipment first furnished in 1988), or does not exceed that amount as may be adjusted by the Secretary from time to time (for equipment first furnished after 1988).".

(b) THREE-MONTH FREEZE ON INCREASES IN PAYMENTS.—Notwithstanding any other provision of law—

(1)(A) the payment levels under title XVIII of the Social Security Act for durable medical equipment and other non-physician services paid on a reasonable charge basis under part B of such title for the 3-month period beginning January 1, 1988, shall be no higher than the payment levels which were in effect under such title for such equipment on December 31, 1987, excluding reductions made by the final sequester order issued by the President on November 20, 1987, pursuant to section 252(b) of the Balanced Budget Emergency Deficit Control Act of 1985 (but subject to the provisions of section 4014 of this Act),

(B) the adjustment in the payment levels for such equipment and services that would have become effective January 1, 1988, if not for the enactment of subparagraph (A), shall become effective on April 1, 1988, and

(C) the adjustment in the inflation index change for such equipment that becomes effective January 1, 1989, shall be 75 percent of the adjustment that would otherwise be made on that date; and

(2)(A) subject to the last sentence of this subsection, each agreement with a participating supplier in effect for 1987 under section 1842(h)(1) of the Social Security Act shall remain in effect for the three-month period beginning on January 1, 1988; and

(B) the effective period for agreements under such section entered into for 1988 shall be the nine-month period beginning on April 1, 1988.

An agreement with a participating supplier in effect for 1987 under section 1842(h)(1) of the Social Security Act shall not remain in effect for the period described in paragraph (2)(A) if the participating supplier requests that the agreement be terminated.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to equipment first furnished an individual on or after April 1, 1988.

SEC. 4031. SERVICES OF A PHYSICIAN ASSISTANT.

(a) SERVICES COVERED.—Section 1861(s)(2)(K) of the Social Security Act (42 U.S.C. 1395x(s)(2)(K)) is amended by striking "defined)" and all that follows through "surgery" and inserting in lieu thereof "defined)".

(b) DETERMINATION OF PAYMENT AMOUNT.—Section 1842(b)(12)(B) of such Act (42 U.S.C. 1395u(b)(12)(B)) is amended to read as follows:

"(B) In subparagraph (A)(ii)(II), the term 'applicable percentage' means—

"(i) 75 percent in the case of services performed (other than as an assistant at surgery) in a hospital,

"(ii) 85 percent in the case of services performed in a skilled nursing facility or intermediate care facility, and

"(iii) 65 percent in the case of other services.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services furnished on or after January 1, 1988.

SEC. 4032. PAYMENT FOR AMBULATORY SURGERY AT EYE, AND EYE AND EAR, SPECIALTY HOSPITALS.

(a) IN GENERAL.—Section 1833(i)(3)(B)(ii) of the Social Security Act (42 U.S.C. 1395l(i)(3)(B)(ii)) is amended—

(1) by striking "In" and inserting in lieu thereof "Subject to the last sentence of this clause, in"; and

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

"In the case of a hospital that makes application to the Secretary and demonstrates that it specializes in eye services or eye and ear services (as determined by the Secretary), receives more than 30 percent of its total revenues from outpatient services, and was an eye specialty hospital or an eye and ear specialty hospital on October 1, 1987, the cost proportion and ASC proportion in effect under subclauses (I) and (II) for cost reporting periods beginning in fiscal year 1988 shall remain in effect for cost reporting periods beginning in subsequent fiscal years.".

(b) STUDY ON PAYMENT RATES.—The Secretary of Health and Human Services shall conduct a study on modifying the amount of payments permitted under section 1833(i) of the Social Security Act with respect to hospitals that specialize in specific surgical procedures and shall report the results of such study to the Congress not later than twelve months after the date of enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective as if included in the amendment made by sec-

tion 9343(a)(1)(B) of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4033. CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) PAYMENT.—Section 1833(h) of the Social Security Act (42 U.S.C. 1395l(h)(2)) is amended—

(1) in paragraph (2), by striking "60" and "62" and inserting in lieu thereof "55" and "57", respectively; and

(2) in paragraph (4)(B)—

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

(B) by striking clause (ii) and inserting in lieu thereof the following new clauses:

"(ii) after December 31, 1987, and before January 1, 1989, is equal to 100 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1), or

"(iii) after December 31, 1988, and so long as a fee schedule for the test has not been established on a nationwide basis, is equal to 97 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).".

(b) INTERMEDIATE SANCTIONS.—Part B of title XVIII is amended by adding at the end thereof the following new section:

"INTERMEDIATE SANCTIONS FOR PROVIDERS OF CLINICAL DIAGNOSTIC LABORATORY TESTS"

"SEC. 1846. (a) If the Secretary determines that any provider or clinical laboratory certified for participation under this title no longer substantially meets the conditions of participation specified under this title with respect to the provision of clinical diagnostic laboratory tests under this part, the Secretary may (for a period not to exceed one year) impose intermediate sanctions developed pursuant to subsection (b), in lieu of canceling immediately the certification of the provider or clinical laboratory.

"(b)(1) The Secretary shall develop and implement—

"(A) a range of intermediate sanctions to apply to providers or certified clinical laboratories under the conditions described in subsection (a), and

"(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

"(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

"(i) directed plans of correction,

"(ii) civil fines and penalties,

"(iii) payment for the costs of onsite monitoring by an agency responsible for conducting certification surveys, and

"(iv) suspension of all or part of the payments to which a provider or certified clinical laboratory would otherwise be entitled under this title with respect to clinical diagnostic laboratory tests provided on or after the date in which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (a).

"(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law.

"(3) The Secretary shall develop and implement specific procedures with respect to when and how each of the intermediate sanctions developed under paragraph (1) is to be applied, the amounts of any fines, and the severity of each of these penalties. Such procedures shall be designed so as to minimize the time between identification of violations and imposition of these sanctions and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall become effective on January 1, 1990.

SEC. 4034. INCREASE IN PART B DEDUCTIBLE.

(a) IN GENERAL.—Section 1833(b) of the Social Security Act is amended by striking "$75" and inserting in lieu thereof "$85".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to calendar years after 1988.

Subpart IV—Provisions Affecting PRO's

SEC. 4041. REFORMS OF PEER REVIEW PROGRAM.

(a) REPORT ON IMPROVEMENTS IN PROCEDURES FOR IMPOSING SANCTIONS.—Not later than one year after the date of enactment of this Act, the Secretary of Health and Human Services shall report to Congress on the improved procedures for imposing sanctions against a practitioner or person under section 1156 of the Social Security Act established through agreement by the Health Care Financing Administration, the American Association of Retired Persons, the American Medical Association, and the Office of the Inspector General in the Department of Health and Human Services. The report shall set forth such improved procedures, describe the response of physicians and providers to the procedures, assess whether the procedures effect an appropriate balance between procedural fairness and the need for ensuring quality medical care, comment on the alternative provider-patient notification procedure contained in the agreement, and recommend whether such procedures should apply to institutional providers of health care services.

(b) REQUIRING REASONABLE NOTICE AND OPPORTUNITY FOR DISCUSSION PRIOR TO DENIAL OF CLAIM.—

(1) Section 1154(a)(3) of the Social Security Act (42 U.S.C. 1320c-3(a)(3)) is amended to read as follows:

"(3)(A) Subject to subparagraph (B), whenever the organization makes a determination that any health care services or items furnished or to be furnished to a patient by any practitioner or provider are disapproved, the organization shall promptly notify such patient and the agency or organization responsible for the payment of claims under title XVIII of this Act of such determination.

"(B) The notification under subparagraph (A) shall not occur until the organization has—

"(i) made a preliminary notification to such practitioner or provider of such determination, and

"(ii) provided such practitioner or provider an opportunity for discussion and review of the determination.

The discussion and review conducted under subparagraph (B)(ii) shall not affect the rights of a practitioner or provider to a formal reconsideration of a determination under this part (as provided under section 1155).".

(2) The amendment made by subsection (a) shall apply with respect to services or items furnished or to be furnished on or after the date of enactment of this Act.

(c) SEPARATE FUNDING LEVELS.—

(1) Section 1866(a)(1)(F)(i)(III) of the Social Security Act (42 U.S.C. 1395cc(a)(1)(F)(i)(III)) is amended—

(A) by striking "1986" and inserting in lieu thereof "1988"; and

(B) inserting "and for any direct or administrative costs incurred as a result of review functions added with respect to a subsequent fiscal year" after "inflation".

(2) Section 1866(a)(4)(C)(ii) of such Act (42 U.S.C. 1395cc(a)(4)(C)(ii)) is amended to read as follows:

"(ii) shall not be less in the aggregate for a fiscal year—

"(I) in the case of hospitals, than the amount specified in paragraph (1)(F)(i)(III), and

"(II) in the case of facilities and agencies, than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such facilities or agencies under part B of title XI.".

(3) The amendments made by this subsection shall apply with respect to fiscal years beginning on or after October 1, 1988.

(d) CONTRACT REQUIREMENTS.—

(1) Section 1153 of the Social Security Act (42 U.S.C. 1320c-2) is amended by adding at the end thereof the following new subsection:

"(h)(1) The Secretary shall publish in the Federal Register any new policy or procedure adopted by the Secretary that affects the performance of contract obligations under this section not less than 45 days prior to the date on which such policy or procedure is to take effect.

"(2) The Secretary shall publish in the Federal Register the general criteria and standards used for evaluating the efficient and effective performance of contract obligations under this section and shall provide opportunity for public comment with respect to such criteria and standards.

"(3) The Secretary shall regularly furnish each peer review organization with a contract under this section with a report that documents the performance of the organization in relation to the performance of other such organizations.".

(2) Section 1153(e) of such Act (42 U.S.C. 1320c-2(e)) is amended—

(A) by inserting "(1)" after "(e)";

(B) by striking "Contracting" and inserting in lieu thereof "Except as provided in paragraph (2), contracting"; and

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

"(2) If a peer review organization with a contract under this section is required to carry out a review function in addition to any function required to be carried out at the time the Secretary entered into or renewed the contract with the organization, the Secretary shall, prior to requiring such organization to carry out such additional function, negotiate the necessary contractual modifications, including modifications that provide for an appropriate adjustment (in light of the cost of such additional function) to the amount of reimbursement made to the organization.".

(3) Section 1153(c)(3) of such Act (42 U.S.C. 1320c-2(c)(3)) is amended by striking "two" and "biennial" and inserting in lieu thereof "three" and "triennial", respectively.

(4)(A) The amendments made by paragraphs (1) and (2) shall become effective on the date of enactment of this Act.

(B) The amendment made by paragraph (3) shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act.

(e) PREFERENCE IN CONTRACTING WITH IN-STATE ORGANIZATIONS.

(1) Section 1153(b)(1) of such Act (42 U.S.C. 1320c-2(b)(1)) is amended by striking "1152(1)(A)" and inserting in lieu thereof "1152(1)(A). If more than one such qualified organization meets the criteria of the pre-

ceding sentence, the Secretary shall give additional consideration to an in-State organization. For purposes of this section, an in-State organization is an organization that has its primary place of business in the State in which review will be conducted (or, which is owned by a parent corporation the headquarters of which is located in such State).".

(2) Section 1153 of such Act, as amended by subsection (d)(1), is further amended by adding at the end thereof the following new subsection:

"(i)(1) Notwithstanding any other provision of this section, the Secretary shall not renew a contract with any organization that is not an in-State organization unless the Secretary has first complied with the requirements of paragraph (2).

"(2)(A) Not later than six months before the date on which a contract period ends with respect to an organization that is not an in-State organization, the Secretary shall publish in the Federal Register—

"(i) the date on which such period ends; and

"(ii) the period of time in which an in-State organization may submit a proposal for the contract ending on such date.

"(B) If one or more qualified in-State organizations submits a proposal within the period of time specified under subparagraph (A)(ii), the Secretary shall not automatically renew the current contract on a noncompetitive basis, but shall provide for competition for the contract in the same manner as a new contract under subsection (b).".

(3)(A) The amendment made by paragraph (1) shall apply with respect to contracts entered into on or after the date of enactment of this Act.

(B) The amendment made by paragraph (2) shall apply with respect to contracts scheduled to be renewed on or after the first day of the eighth month to begin after the date of enactment of this Act.

(f) REQUIREMENTS RELATING TO FUNCTIONS OF PEER REVIEW ORGANIZATIONS.—

(1) Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)) is amended by adding at the end thereof the following new paragraph:

"(15) During each year of the contract entered into under section 1153(b), the organization shall perform not less than 20 percent of its review activities of rural hospitals under paragraph (1) on the site where services or items are provided and shall include, as part of such on-site review, on-site review at each rural hospital in the organization's area.".

(2) Section 1154(a)(4)(B) of the Social Security Act (42 U.S.C. 1320c-3(a)(4)(B)) is amended—

(A) by inserting before the period at the end of the first sentence the following: "and whether individuals enrolled with an eligible organization have adequate access to health care services provided by or through such organization (as determined, in part, by a survey of individuals enrolled with the organization who have not yet used the organization to receive such services). The contract of each organization shall also provide that with respect to health care provided by a health maintenance organization or competitive medical plan under section 1876, the organization shall maintain a beneficiary outreach program designed to apprise individuals receiving care under such section of the role of the peer review system, of the rights of the individual under such system, and of the method and purposes for contacting the organization"; and

(B) by striking "previous sentence" and inserting in lieu thereof "previous two sentences".

(3) Section 1154(a)(5) of such Act (42 U.S.C. 1320c-3(a)(5)) is amended—

(A) by inserting "(A)" after "(5)"; and

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

"(B) The organization shall arrange for several educational sessions to be conducted during a year at hospitals in the organization's area for the purpose of providing providers, practitioners, and hospital personnel with the criteria used by the organization in making the determinations under subparagraphs (A), (B), and (C) of paragraph (1) with respect to such hospital.".

(4) Section 1154(a)(7)(A) of such Act (42 U.S.C. 1320c-3(a)(7)(A)) is amended—

(A) by inserting "(i)" after "(A)";

(B) by striking the semicolon and inserting in lieu thereof "; and"; and

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

"(ii) in the case of psychiatric and physical rehabilitation services, make arrangements to ensure that (to the extent possible) initial review of such services be made by a physician who is trained in psychiatry or physical rehabilitation (as appropriate).".

(5) Section 1154(a)(6) of such Act (42 U.S.C. 1320c-3(a)(6)) is amended by adding at the end thereof the following:

"As a component of the norms described in subparagraph (A) or (B), the organization shall take into account the special problems associated with delivering care in remote rural areas, the availability of service alternatives to inpatient hospitalization, and social factors that affect the safety and efficacy of service delivery.".

(6) The amendments made by this subsection shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act.

(g) TELECOMMUNICATIONS DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services shall enter into agreements with entities submitting applications under this subsection (in such form as the Secretary may provide) to establish demonstration projects to examine the feasability of requiring instruction and oversight of rural physicians, in lieu of imposing sanctions, through use of video communication between rural hospitals and teaching hospitals under this title. Under such demonstration projects, the Secretary of Health and Human Services may provide for payments to physicians consulted via video communication systems. No funds may be expended under the demonstration projects for the acquisition of capital items including computer hardware.

(h) PROVIDER REPRESENTATION OF MEDICARE BENEFICIARIES DURING APPEALS OF PEER REVIEW DETERMINATIONS.—Section 1155 of such Act (42 U.S.C. 1355) is amended—

(1) by inserting "(a)" before "Any"; and

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

"(b) Sections 206(a), 1102, and 1871 shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this section by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies the individual with such a service or item. If a person furnishes services or items to an individual and represents the individual under this section, the person may not impose any financial liability on such individual in connection with such representation.".

(i) FINANCIAL LIABILITY OF MEDICARE BENEFICIARIES IN CASE OF DENIAL OF PAYMENT FOR SUBSTANDARD CARE.—

(1) Section 1866(a)(1)(K) of such Act (42 U.S.C. 1395cc(a)(1)(K)) is amended by striking "person" and inserting in lieu thereof "person any amounts (including the amount of any copayment or deductible under this title)".

(2) Section 1842(l)(1)(A)(iii) of such Act (42 U.S.C. 1395u(l)(1)(A)(iii)) is amended—

(A) by inserting "(I)" after "(iii)";

(B) by striking "and" and inserting in lieu thereof "or"; and

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

"(II) a peer review organization determines under part B of title XI that payment may not be made by reason of section 1154(a)(1)(B), and".

(3) Section 1842(b)(3)(B)(ii)(II) of such Act (42 U.S.C. 1395(b)(3)(B)(ii)(II)) is amended by striking "1862(a)" and inserting in lieu thereof "1862(a) or by reason of a determination under section 1154(a)(1)(B)".

(4)(A) The amendment made by paragraph (1) shall apply to provider agreements as of the date of enactment of this Act.

(B) The amendments made by paragraph (2) shall apply to items and services furnished on or after the date of enactment of this Act.

(C)(i) The amendment made by paragraph (3) shall apply to items and services furnished on or after the date of enactment of this Act.

(ii) The Secretary of Health and Human Services shall provide for such timely amendments to contracts under section 1842 of the Social Security Act, and regulations, to such extent as may be necessary to implement the amendment made by paragraph (3).

(j) PATIENT LIABILITY FOR HOSPITAL CHARGES DURING APPEAL OF DISCHARGE NOTICE.—

(1) Section 1154(e)(2) of such Act (42 U.S.C. 1320c-3(e)(2)) is amended by adding at the end thereof the following: "If the hospital requests such a review, it shall also notify the patient that the review has been requested.".

(2) Sections 1154(e)(3)(A)(i) (42 U.S.C. 1320c-3(e)(3)(A)(i)) and 1154(e)(3)(B) (42 U.S.C. 1320c-3(e)(3)(B)) of such Act are each amended by inserting "or (2)" after "paragraph (1)".

(k) RESTRICTION ON OMB AUTHORITY TO APPORTION PEER REVIEW FUNDING.—Notwithstanding any other provision of law, the amounts payable from the Trust Funds under parts A and B of title XVIII of the Social Security Act for carrying out the provisions of part B of title XI of such Act shall not be subject to the apportionment authority of the Office of Management and Budget (as described in subchapter II of chapter 15, title 31, United States Code).

Subpart V—Provisions Affecting Medicaid

SEC. 4051. NURSING HOME QUALITY.

(a) REVISION OF REQUIREMENTS FOR SKILLED NURSING FACILITIES.—

(1) Subsection (j) of section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended to read as follows:

"SKILLED NURSING FACILITY

"(j) The term 'skilled nursing facility' means (except for purposes of subsection (a)(2)) an institution (or a distinct part of

an institution) that has in effect a transfer agreement (meeting the requirements of subsection (l)) with one or more hospitals having agreements in effect under section 1866 and that meets the following requirements:

"(1) SERVICES.—The institution is primarily engaged in providing to inpatients (A) skilled nursing care and related services for patients who require medical or nursing care, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, and is not primarily for the care and treatment of mental diseases.

"(2) DEVELOPMENT OF POLICIES.—The institution has policies, which are developed with the advice of (and with provision for review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more registered professional nurses, to govern the skilled nursing care and related medical or other services it provides.

"(3) RESPONSIBILITY FOR EXECUTION OF POLICIES.—The institution has a physician, a registered professional nurse, or a medical staff responsible for the execution of the policies developed as provided in paragraph (2).

"(4) PHYSICIAN SUPERVISION.—The institution—

"(A) requires that the health care of every resident be provided under the supervision of a physician, and

"(B) provides for having a physician available to furnish necessary medical care in case of emergency.

"(5) CLINICAL RECORDS; ASSESSMENTS.—

"(A) The institution maintains clinical records (on a discipline-specific or interdisciplinary basis) on all residents.

"(B) The institution provides for—

"(i) accurate assessments of each patient in accordance with the requirements of subparagraph (C), and

"(ii) the results of such assessments to be recorded in the clinical records of the resident and to be used in formulating, reviewing, and revising the plan of care developed under paragraph (8).

"(C)(i)(I) A preliminary assessment shall be performed with respect to each resident within 48 hours of his or her admission to the institution. Such assessment shall be coordinated with any State-required preadmission screening to the maximum extent practicable in order to avoid duplicative testing and effort.

"(II) A comprehensive assessment shall be performed with respect to each resident within 21 days of his or her admission to the institution, at least annually thereafter, and whenever there is a significant change in the resident's mental or physical condition.

"(ii) An assessment required by this paragraph—

"(I) shall include (but not be limited to) the identification of medical problems and the assessment of physical, mental, and psychosocial functioning,

"(II) shall be coordinated by a registered professional nurse and carried out in consultation with appropriate health care providers (such as licensed practical nurses, nursing aides, activities professionals, social workers, pharmacists, nutritionists, mental health professionals, and rehabilitation therapists),

"(III) shall utilize a minimum data set of core elements and common definitions and guidelines for utilization specified by the Secretary (in accordance with guidelines established by the Secretary), and

"(IV) shall be available for review and comment by the resident in accordance with the resident's right to participate in developing his or her plan of care under paragraph (8)(A)(i).

"(D) The institution must not admit, on or after January 1, 1989, any new resident who—

"(i) is mentally ill (as defined in section 1902(o)(7)) unless the State mental health authority, based on an independent physical and mental evaluation, has determined prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by such institution, and, if the individual requires such level of services, whether the individual requires active treatment for mental illness, or

"(ii) is mentally retarded (as defined in section 1902(o)(7)) unless the State mental retardation or developmental disability authority has determined prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by such institution, and, if the individual requires such level of services, whether the individual requires active treatment for mental retardation.

The institution must make a copy of any such determination part of the resident's clinical records.

"(6) REQUIRED NURSING CARE AND SOCIAL SERVICES.—

"(A) Except as provided in subparagraph (C), the institution provides 24-hour licensed nursing service that is sufficient to meet nursing needs in accordance with the policies developed as provided in paragraph (2), and has at least one registered professional nurse employed full time.

"(B) Except as provided in subparagraph (C), in the case of an institution with more than 120 beds, the institution has at least one social worker (with at least a bachelor's degree in social work) employed full time.

"(C) A State may waive a requirement of subparagraph (A) or (B) with respect to an institution if—

"(i) the institution demonstrates to the satisfaction of the State that the institution has been unable, despite diligent efforts (including offering wages at the community prevailing rate), to recruit appropriate personnel, and

"(ii) the State determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the institution.

A waiver under this subparagraph shall be subject to annual renewal and to the review of the Secretary (as described in section 1902(a)(33)(B)) and shall be accepted by the Secretary for purposes of this title to the same extent as is the State's certification of the institution.

"(7) DRUGS AND BIOLOGICALS.—The institution establishes appropriate methods and procedures for the dispensing and administering of drugs and biologicals.

"(8) SCOPE OF SERVICES UNDER PLAN OF CARE.—The institution provides services to maintain or improve each resident's mental and psychosocial well-being, as well as physical well-being, in accordance with a written plan of care which—

"(A) is developed—

"(i) to the extent practicable, in consultation with the resident (or his or her legal representative), and

"(ii) by a multidisciplinary team coordinated by a registered professional nurse,

"(B) is periodically reviewed and revised after each assessment under paragraph (5)(B), and

"(C) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met.

"(9) NONDISCRIMINATION.—

"(A) The institution establishes and maintains identical policies and practices regarding transfers, discharges, and the provision of those services required under this title or the State plan under title XIX for all individuals regardless of source of payment.

"(B)(i) The institution does not require individuals applying to reside or residing in the institution to waive their rights to benefits under this title or title XIX.

"(ii) The institution prominently displays in the institution and provides to individuals applying to reside or residing in the institution written information regarding how to apply for and use benefits under this title or title XIX and how to receive refunds for previous payments covered by such benefits.

"(C)(i) Subject to clauses (ii) and (iii), the institution does not require any oral or written assurance from any person with respect to an individual who is staying in (or applying for admission to) the institution that such person will be financially responsible for any charges with respect to the individual.

"(ii) An institution may require a person who is authorized by law to disburse the income of such an individual to enter into an agreement to pay, solely from the income of the individual, for items and services furnished to the individual for which payment may not be made under this title or under a State plan approved under title XIX.

"(iii) Where an institution furnishes, at the request of an individual, items or services for which payment may not be made (in whole or in part) under this title or under a State plan approved under title XIX, such institution may require payment by the individual (or by another on behalf of the individual) in an amount equal to the amount for which payment may not be made under such title or plan if, before accepting an item or service, the individual is informed of the amount for which payment will not be made for such item or service. The eligibility of an individual for benefits under this title or medical assistance under title XIX shall not be affected by any payment made by such individual (or other person on behalf of the individual) under the preceding sentence, and the failure to make any such payment shall not constitute grounds for transfer or discharge from the institution.

"(D) The institution does not require (as a condition of admission or continued stay in the facility) any nonrefundable deposit, gift, contribution, or prepayment to be made by or on behalf of an individual.

"(10) RESIDENT'S RIGHTS.—The institution protects and promotes the rights of individuals residing in the institution, including each of the following rights:

"(A) The right to be informed orally and in writing at the time of admission to the institution of the resident's legal rights during the stay at the facility and to have these rights described in a written statement, which is made available to the resident upon reasonable request and which is updated upon changes in such rights.

"(B) The right to be informed in writing before or at the time of admission and periodically during his or her stay, of services available in the facility and of related charges for such services, including any charges for services not covered under this title or under a State plan approved under

title XIX, or not covered by the facility's basic per diem rate.

"(C) In the case of an individual who is unable (as determined by State law) to exercise his or her rights, the rights (as specified in regulation by the Secretary) that may be exercised by another person on behalf of the resident (as permitted under State law).

"(D) The right to prompt efforts by the institution to resolve grievances the individual may have, including those with respect to the behavior of other residents.

"(E) The right to file complaints, voice grievances, and recommend changes in policies and service to the staff of the facility and to outside representatives of his or her choice, free from restraint, interference, coercion, discrimination, or reprisal.

"(F) The right (with those of family members) to organize, maintain, and participate in resident advisory and family councils, including the right to assistance from a designated staff member, space, and privacy for meetings.

"(G) The right to participate freely in social, religious, and community activities that do not interfere with the rights of others residing in the facility.

"(H) The right to associate and communicate privately with persons of his or her choice.

"(I) The right to examine, upon reasonable request, the results of the most recent certification survey conducted by the Secretary or a State or local agency with respect to the institution and any plan of correction in effect with respect to the institution.

"(J) Any other right established by the Secretary.

"(11) TRANSFER AND DISCHARGE RIGHTS.—

"(A) An individual is transferred or discharged only for medical reasons, or for his welfare or that of other patients, or for nonpayment of his stay (except as prohibited by titles XVIII or XIX of the Social Security Act), and is given reasonable advance notice to ensure orderly transfer or discharge.

"(B) The institution documents in a resident's records the circumstances of a discharge or transfer.

"(C) The institution notifies a resident, as evidenced by a signed acknowledgment, at least 30 days in advance of the resident's transfer or discharge except where—

"(i) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

"(ii) a more immediate transfer or discharge is necessitated by the resident's urgent medical needs,

as explicitly recorded by the attending physician in the resident's record.

"(D) Before effecting a transfer of a resident, the institution provides the resident with—

"(i) a notice of the resident's right to appeal the transfer to the State survey and certification agency, and

"(ii) the name, mailing address, and telephone number of the State long-term care ombudsman.

"(E) The institution provides sufficient preparation and orientation to residents to provide for safe and orderly transfer or discharge from the institution.

"(F) The institution provides—

"(i) written information to each individual entitled to benefits under a State plan approved under title XIX concerning the provisions of the State plan regarding bed holds before discharging the resident for hospitalization or therapeutic leave, and

"(ii) at the time of discharge of a resident to a hospital or for therapeutic leave, written notice to the resident of the duration of any bed hold under the State plan.

"(G) The Secretary shall establish requirements pertaining to inter- and intra-institution transfers and discharges, including patient rights of notice and appeal.

"(12) ACCESS AND VISITATION RIGHTS.—The institution—

"(A) permits immediate access to any resident by any officially designated representative of the Secretary, the State (including representatives of the State office of long-term care ombudsman), the resident's individual physician, relatives who are visiting with the consent of the individual, and other individuals designated in writing by the resident,

"(B) permits reasonable access during regular business hours by any entity or individual that provides health, social, or legal services to a resident, and

"(C) permits representatives of the State office of long-term care ombudsman, with the permission of the resident (or his or her legal representative) and consistent with State law, to examine a resident's medical, nursing, and social records.

"(13) QUALITY OF LIFE.—The institution cares for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

"(14) QUALITY OF CARE.—(A) The institution meets the needs of each resident for necessary medical, nursing, restorative, and psychosocial services that permit the resident to attain and maintain the highest feasible level of functioning in the least restrictive environment possible in light of his or her condition.

"(B) The Secretary shall establish standards for assessing the quality of care provided by institutions in at least the following areas:

"(i) vision and hearing,

"(ii) activities of daily living,

"(iii) use of physical restraints,

"(iv) accidents,

"(v) nutrition and fluid intake,

"(vi) cognitive, behavioral, and social functioning,

"(vii) use of urinary catheters,

"(viii) prevention and care of pressure ulcers, and

"(ix) use of drugs.

"(15) QUALITY ASSESSMENT AND ASSURANCE.—The institution maintains a quality assessment and assurance program that meets the following requirements:

"(A) A committee, consisting of the director of nursing services, a physician designated by the institution, and at least three other members of the staff, meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary.

"(B) One member of the committee described in subparagraph (A) is assigned primary responsibility for ongoing coordination and oversight of quality assessment and assurance activities.

"(C) The committee seeks comments and suggestions from residents and staff with respect to quality assessment and assurance issues (and maintains a permanent record of the comments and suggestions received).

"(D) Issues addressed by the committee at least annually shall include—

"(i) prevention measures and the occurrence of infectious diseases,

"(ii) the promotion of behavioral, cognitive, and social functioning,

"(iii) quality of life,

"(iv) use of medications (including a review of each resident's drug regimen),

"(v) use of chemical and physical restraints,

"(vi) appropriateness, adequacy, and implementation of nursing plans,

"(vii) frequency and seriousness of accident reports (and measures for preventing accidents), and

"(viii) frequency and resolution of residents' grievances and complaints (and mechanisms for monitoring the satisfaction of residents with the quality of care).

"(E) The committee develops and implements appropriate plans of action to correct identified quality deficiencies.

"(F) The committee—

"(i) documents—

"(I) the time expended by it in quality assessment and assurance activities, and

"(II) the issues that it has addressed, and

"(ii) makes such documentation available, upon request, to Secretary and to the appropriate agency responsible for conducting certification surveys with respect to the institution.

"(G)(i) Except as provided in clause (ii), the confidentiality of committee records is maintained.

"(ii) Committee records shall be made available in accordance with subparagraph (F)(ii) and as required by any other provision of law or by court order.

"(H) In determining whether an institution complies with the requirements of this paragraph, the Secretary and the appropriate State agency responsible for conducting certification surveys with respect to the institution shall take into account the degree to which the committee identified and acted upon any deficiencies found with respect to the institution.

"(16) REQUIRED TRAINING OF NURSE AIDES.—

"(A)(i) The institution—

"(I) provides (by itself or through others) training under a program that is recognized and approved by the State under clause (ii) for individuals that are hired or utilized by the institution as nurse aides, and

"(II) does not employ or utilize any individual as a nurse aide for more than 6 months unless the individual has successfully completed a training and competency evaluation program that is recognized and approved by the State under clause (ii).

"(ii) Not later than January 1, 1990, each State, as a condition of approval of its State plan under title XIX, shall—

"(I) specify those training programs that the State recognizes and approves (in consultation with providers, consumers, nurse aides, health care professionals, and other interested groups) for purposes of subparagraph (A) and that meet the minimum requirements established under clause (iii)(I), and

"(II) maintain a registry of all individuals who have successfully completed such a program and records of all test results with respect to the program.

"(iii) Not later than one year after the date of the enactment of this paragraph, the Secretary shall establish—

"(I) minimum standards for the training and competency evaluation programs described in clause (i), and

"(II) minimum standards for the mechanism by which a State recognizes and approves such programs.

"(iv) The standards referred to in clause (iii)(I) shall specify the minimum amount of time required for initial and ongoing training (not less than 75 hours in the case of initial training), the areas to be included in a training and testing program (including, at a minimum, basic nursing skills, personal

care skills, cognitive, behavioral, and social care, basic restorative services, and residents' rights), and the minimum qualifications for instructors in the program.

"(v) The standards referred to in clause (iii)(II) shall specify the frequency with which training and competency evaluation programs shall be reviewed by a State and the methodology (which shall include performance-based evaluations as well as analysis of written submissions) by which a State shall make determinations with respect to whether a program meets the minimum standards established pursuant to clause (iii)(I).

"(vi)(I) The requirement of clause (i)(I) shall apply with respect to individuals hired on or after January 1, 1990.

"(II) No individual who is hired before the date specified in subclause (I) may be employed by an institution as a nurse aide on or after the date that is three years after the date of the enactment of this paragraph unless the individual has successfully completed a competency evaluation program that is recognized and approved by the State under clause (ii). In the case of any such individual, the institution shall allow the individual at least three opportunities to complete such a program successfully and shall make a good faith effort to provide the individual with the preparation necessary to complete such a program successfully.

"(B) The institution does not permit any nurse aide to provide unsupervised patient care of a type for which the aide has not demonstrated his or her competency.

"(C) The institution requires any nurse aide who has ceased providing direct patient care for more than 24 months to complete an appropriate training and competency evaluation program before again providing such care.

"(D) The institution has an ongoing program of training and performance review for nurse aides, including training for individuals providing special care to residents such as those with cognitive impairments.

"(E) The institution provides each new nurse aide an orientation to the facility and to the residents for whom the aide provides care (in addition to the general initial training and competency testing program).

"(F) The institution assures that all aides are able to read, speak, and write sufficiently to perform assigned duties.

"(17) ADMINISTRATION.—(A) The institution is administered in a manner that enables it to use its resources effectively and efficiently to maintain and improve the residents' physical, mental, and psychosocial well-being.

"(B) The Secretary shall establish criteria for assessing an institution's compliance with the requirement of this paragraph with respect to—

"(i) its governing body,

"(ii) its management (including nursing services),

"(iii) resident and consumer participation,

"(iv) medical direction and physicians' services (including the use physicians' assistants and nurse practitioners),

"(v) laboratory, radiological, and pharmaceutical services,

"(vi) resident care (including medical records),

"(vii) agreements regarding transfers of residents to and from hospitals, and

"(viii) levels of professional staffing.

"(18) LEVEL OF STAFFING.—

"(A) The staffing of the institution is at a level to meet the needs of its residents.

"(B) The compliance of an institution with the requirement of subparagraph (A) shall be determined pursuant to the certification and survey process established under section 1864(d) and not pursuant to any reports required to be filed by the institution on a quarterly or other periodic basis. No institution may be required by the Secretary or a State, under this title or title XIX, to submit a quarterly staffing report on or after the date of the enactment of this paragraph.

"(19) UTILIZATION REVIEW; PLAN AND BUDGET.—The institution has in effect—

"(A) a utilization review plan that meets the requirements of subsection (k), and

"(B) an overall plan and budget that meets the requirements of subsection (z).

"(20) INDEPENDENT EVALUATION.—The institution cooperates in an effective program that provides for regular independent medical evaluation and audit of the residents of the institution to the extent required by the programs in which the institution participates (including medical evaluation of each resident's need for skilled nursing facility services).

"(21) PROTECTION OF RESIDENT FUNDS.—The institution establishes and maintains a system for protecting the personal funds of residents that meets the following requirements—

"(A) STATEMENT OF RESIDENT'S RIGHTS.—The institution furnishes each resident, upon admission to the institution, with a written statement that—

"(i) describes all services furnished by the institution that can be charged to the resident's personal funds and the extent to which any such service is included in the institution's basic rate;

"(ii) states there is no obligation for the resident to deposit personal funds with the institution and describes the resident's right to select how such funds are handled; and

"(iii) describes the institution's obligation, once it accepts the written authorization of the resident, to hold, safeguard, and account for the resident's personal funds in accordance with subparagraph (B).

"(B) MANAGEMENT OF PERSONAL FUNDS.—Upon the institution's acceptance of the written authorization of the resident (as described in subparagraph (A)(iii))—

"(i) the institution deposits any amount of personal funds in excess of $50 in an interest bearing account (or accounts) that is separate from any of the institution's operating accounts and credits all interest earned on such separate account to such account;

"(ii) with respect to any amount of personal funds not included in the account under clause (i), the institution maintains such funds in a non-interest bearing account or petty cash fund; and

"(iii) the institution assures a full and complete accounting of the personal funds so as to ensure that there is no commingling of such funds with the funds of the institution or with the funds of any individual other than another resident.

"(C) WRITTEN RECORD.—The institution maintains a written record of all financial transactions involving the personal funds of a resident who entrusts personal funds with the institution and affords the resident (or a legal representative of the resident) reasonable access to such record.

"(D) SURETY BOND.—The institution purchases a surety bond to guarantee the security of all personal funds of residents entrusted to the institution.

"(E) ELIGIBILITY NOTIFICATION.—The institution notifies the resident (or a legal representative of the resident) and the State agency under title XIX when the personal funds of the resident entrusted to the institution reach an amount that threatens the resident's eligibility for benefits under title XVI or medical assistance under title XIX.

"(F) LIMITATION ON CHARGES TO PERSONAL FUNDS.—The institution does not charge to the personal funds of a resident the costs of any item or service for which payment is made under this title or title XIX (as the case may be).

"(22) LICENSING AND LIFE SAFETY CODE.—

"(A) The institution is licensed under applicable State and local law.

"(B) The institution meets such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that—

"(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon an institution, but only if such waiver will not adversely affect the health and safety of residents, and

"(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents in nursing facilities.

"(23) COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND PROFESSIONAL STANDARDS.—The institution operates and provides services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1124) and with all accepted professional standards and principles.

"(24) ACTIVITIES PROGRAM.—The institution provides for an activities program, directed by a qualified professional, to encourage self care, resumption of normal activities, and maintenance of an optimal level of psychosocial functioning in a manner appropriate to the needs and interests of each resident.

"(25) MISCELLANEOUS.—The institution meets such other conditions relating to the health and safety of residents or relating to the physical facilities thereof as the Secretary may find necessary.

For purposes of subsection (a)(2), such term includes any institution that meets the requirements of paragraph (1). Notwithstanding any other provision of law, all information concerning nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available to Federal or State employees for purposes consistent with the effective administration of programs established under this title. Nothing in this subsection shall be construed to require an institution that does not participate in the program under title XIX to accept payment under such title or to accept for treatment any individual for whom payment may be made under such title.".

(2) The first sentence of section 1905(c) of such Act (42 U.S.C. 1396d(c)) is amended by striking "and (4)" and all that follows through "funds." and inserting in lieu thereof "(4) meets the requirements of section 1861(j)(21) with respect to protection of patients' personal funds, and (5) except with respect to services described in subsection (d), meets the requirements of paragraphs (5), (6), (9) through (18), and (24) of section 1861(j).".

(3) Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(A) in paragraph (13)(A), by inserting "which, in the case of skilled nursing facilities and intermediate care facilities, are adjusted in accordance with subsection (q)," after "State" the second place it appears; and

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

"(q)(1) Effective for fiscal years beginning on or after October 1, 1989, the plan of a State shall not be considered to have met the requirement of subsection (a)(13) unless the State has, as of April 1 before the fiscal year concerned, submitted to the Secretary an amendment to the plan to provide for an appropriate adjustment in the payment rates for skilled nursing facilities and intermediate care facilities to reflect the costs of complying with any requirement under section 1861(j) (as made applicable to this title by section 1905(i)) that takes effect during the fiscal year concerned which was not in effect on October 1, 1987, in Federal or State law or regulation.

"(2) The Secretary shall, not later than September 30 before the fiscal year concerned, review each plan amendment submitted under paragraph (1) for compliance with the requirement of subsection (a)(13). If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement.

"(3) The absence of approval of such a plan amendment does not relieve the State or any such facility of any obligation or requirement under this title.".

(4) Not later than January 1, 1990, the Secretary shall—

(A) specify a minimum data set for use by an institution in conducting the assessments required by section 1861(j)(5)(B) of the Social Security Act, and

(B) establish guidelines for utilization of the data set.

(5) Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (47),

(2) by striking the period at the end of paragraph (48) and inserting in lieu thereof "; and", and

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

"(49) provide that, with respect to an individual who is furnished skilled nursing facility services or intermediate care facility services under the plan, payment will be made under the plan for at least 3 bed hold days; and

"(50) provide that the State will meet the requirements of section 1902(r) with respect to screening, review, and disposition of mentally ill and mentally retarded residents of skilled nursing facilities and intermediate care facilities (other than intermediate care facilities for the mentally retarded).".

(6) Section 1902 of such Act, as amended by paragraph (3)(B), is further amended by adding at the end thereof the following:

"(r) STATE REQUIREMENTS FOR PREADMISSION SCREENING AND RESIDENT REVIEW.—

"(1) PREADMISSION SCREENING.—Each State, as a condition of approval of its plan under this title, effective January 1, 1989, must have in effect a preadmission screening program, for making determinations (using any criteria developed under paragraph (8)) described in section 1861(j)(5)(D) for mentally ill and mentally retarded individuals (as defined in paragraph (7)) who are being considered for admission to nursing facilities on or after January 1, 1989.

"(2) STATE REQUIREMENT FOR ANNUAL RESIDENT REVIEW.—

"(A) FOR MENTALLY ILL RESIDENTS.—As a condition of approval of a State plan under this title, as of April 1, 1990, in the case of each resident of a nursing facility who is mentally ill, the State mental health authority must based on an independent physical and mental evaluation, determine (using any criteria developed under paragraph (8))—

"(i) whether or not the resident, because of the resident's physical or mental condition (or the lack of appropriate alternative placement), requires the level of services provided by a nursing facility or requires the level of services provided in another setting, including an inpatient psychiatric hospital for individuals under age 21 (as described in section 1905(h)) or of an institution for mental diseases providing medical assistance to individuals 65 years of age or older or a program under an approved home and community-based waiver under section 1915(c); and

"(ii) whether or not the resident requires active treatment for mental illness.

"(B) FOR MENTALLY RETARDED RESIDENTS.—As a condition of approval of a State plan under this title, as of April 1, 1990, in the case of each resident of a nursing facility who is mentally retarded, the State mental retardation or developmental disability authority must review and determine (using any criteria developed under paragraph (8))—

"(i) whether or not the resident, because of the resident's physical or mental condition (or the lack of appropriate alternative placement), requires the level of services provided by a nursing facility or requires the level of services of an intermediate care facility described under section 1905(d) or a program under an approved home and community-based waiver under section 1915(c); and

"(ii) whether or not the resident requires active treatment for mental retardation.

"(C) FREQUENCY OF REVIEWS.—

"(i) ANNUAL.—Except as provided in clauses (ii) and (iii), the reviews and determinations under subparagraphs (A) and (B) must be conducted with respect to each mentally ill or mentally retarded resident not less often than annually.

"(ii) PREADMISSION REVIEW CASES.—In the case of a resident subject to a preadmission review under section 1861(j)(5)(D), the review and determination under subparagraph (A) or (B) need not be done until the resident has resided in the nursing facility for 1 year.

"(iii) INITIAL REVIEW.—The reviews and determinations under subparagraphs (A) and (B) must first be conducted (for each resident not subject to preadmission review under section 1861(j)(5)(D)), by not later than April 1, 1990.

"(3) RESPONSE TO PREADMISSION SCREENING AND RESIDENT REVIEW.—As a condition of approval of a State plan, as of April 1, 1990, the State must meet the following requirements:

"(A) LONG-TERM RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES, BUT REQUIRING ACTIVE TREATMENT.—In the case of a resident who is determined, under paragraph (2), not to require the level of services provided by a nursing facility, but to require active treatment for mental illness or mental retardation, and who has continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers—

"(i) inform the resident of the institutional and noninstitutional alternatives covered under the State plan for the resident,

"(ii) offer the resident the choice of remaining in the facility or of receiving covered services in an alternative appropriate institutional or noninstitutional setting,

"(iii) clarify the effect on eligibility for services under the State plan if the resident chooses to leave the facility (including its effect on readmission to the facility), and

"(iv) regardless of the resident's choice, provide for (or arrange for the provision of) such active treatment for the mental illness or mental retardation.

A State shall not be denied payment under this title for nursing facility services for a resident described in this subparagraph because the resident does not require the level of services provided by such a facility, if the resident chooses to remain in such a facility.

"(B) OTHER RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES, BUT REQUIRING ACTIVE TREATMENT.—In the case of a resident who is determined, under paragraph (2), not to require the level of services provided by a nursing facility, but to require active treatment for mental illness or mental retardation, and who has not continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers—

"(i) arrange for the safe and orderly discharge of the resident from the facility,

"(ii) prepare and orient the resident for such discharge, and

"(iii) provide for (or arrange for the provision of) such active treatment for the mental illness or mental retardation in an appropriate facility or program.

"(C) RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES AND NOT REQUIRING ACTIVE TREATMENT.—In the case of a resident who is determined, under paragraph (2), not to require the level of services provided by a nursing facility and not to require active treatment for mental illness or mental retardation, the State must—

"(i) arrange for the safe and orderly discharge of the resident from the facility, and

"(ii) prepare and orient the resident for such discharge.

"(D) DENIAL OF PAYMENT WHERE FAILURE TO CONDUCT PREADMISSION SCREENING.—No payment may be made under section 1903(a) with respect to nursing facility services furnished to an individual for whom a determination is required under paragraph (2) or section 1861(j)(5)(D) but for whom the determination is not made.

"(5) PERMITTING ALTERNATIVE DISPOSITION PLANS.—With respect to residents of a nursing facility who are mentally retarded or mentally ill and who are determined under paragraph (2) not to require the level of services of such a facility, but who require active treatment for mental illness or mental retardation, a State and the nursing facility shall be considered to be in compliance with the requirement of this paragraph if, before October 1, 1988, the State and the Secretary have entered into an agreement relating to the disposition of such residents of the facility and the State is in compliance with such agreement. Such an agreement may provide for the disposition of the residents after the date specified in paragraph (3).

"(6) APPEALS PROCEDURES.—Each State, as a condition of approval of its plan under this title, effective January 1, 1989, must have in effect an appeals process for individuals adversely affected by determinations under paragraph (1) or (2).

"(7) DEFINITIONS.—In this subsection and section 1861(j)(5)(D):

"(A) Subject to the last sentence of this paragraph, an individual is considered to be 'mentally ill' if the individual has a primary or secondary diagnosis of mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition).

"(B) An individual is considered to be 'mentally retarded' if the individual requires services of the type provided by an institution described in section 1905(d).

"(C) The term 'active treatment' has the meaning given such term by the Secretary in regulations.

"(D) The term 'nursing facility' means a skilled nursing facility or intermediate care facility (other than an intermediate care facility for the mentally retarded).

For purposes of subparagraph (A), the term 'mentally ill' does not include any organic disease of the brain or dementia (including Alzheimer's disease and related disorders).

"(8) FEDERAL MINIMUM CRITERIA FOR PREADMISSION SCREENING AND RESIDENT REVIEW.—The Secretary shall develop, by not later than October 1, 1988, separate minimum criteria for States to use in making determinations under paragraph (2) and under section 1861(j)(5)(D) with respect to individuals who are mentally ill or mentally retarded, and in permitting individuals adversely affected to appeal such determinations, and shall notify the States of such criteria.".

(7)(A) Except as provided by subparagraphs (B) and (C), the amendments made by this subsection shall apply with respect to services furnished on or after January 1, 1988.

(B) Section 1861(j)(6) of the Social Security Act, as made applicable to intermediate care facilities by the amendment made by paragraph (2) of this section, shall apply—

(i) in the case of facilities with more than 120 beds, to services furnished on or after October 1, 1988,

(ii) in the case of facilities with more than 60 beds but not more than 120 beds, to services furnished on or after October 1, 1990, and

(iii) in the case of facilities with 60 beds or less, to services furnished on or after October 1, 1992.

(C) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made by subsection (e), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(b) ESTABLISHMENT OF GRANT PROGRAM.—

(1) The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall establish a program of grants to skilled nursing facilities certified as providers under title XVIII of the Social Security Act. The purpose of the program shall be to promote the development by such facilities of projects that enhance the quality of care or the quality of life of residents of such facilities.

(2) Any skilled nursing facility that desires to receive a grant under this subsection to implement a project of the type described in paragraph (1) may submit an application to the Secretary, at such time and in such form and manner as the Secretary may prescribe.

(3) In determining which skilled nursing facilities making application under paragraph (2) will receive grants under this section, the Secretary shall take into account—

(A) the likelihood that the proposed project will achieve its stated objectives,

(B) the likelihood that the proposed project will serve as a model for similar projects in other facilities,

(C) the degree to which the funds provided by a grant will be matched by funds from non-Federal sources, and

(D) the support for the project by the ombudsman, the area agency on aging, nursing home residents and their families, nursing home staff, institutions of higher learning, and other providers of long-term care.

(4) A grant to a skilled nursing facility under this subsection may not exceed $25,000 a year.

(5)(A) A skilled nursing facility receiving a grant under this subsection shall furnish the Secretary with such information as the Secretary may require to evaluate the project with respect to which the grant is made and to ensure that the grant is expended for the purposes for which it was made.

(B) The Secretary shall submit a report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

(6) For purposes of carrying out the program of grants under this section, there are authorized to be appropriated from the Federal Hospital Insurance Trust Fund $2,000,000 for each of the fiscal years 1988, 1989, and 1990.

(c) CHANGES IN CERTIFICATION PROGRAM AND PROCESS.—

(1) Section 1864(a) of such Act (42 U.S.C. 1395aa(a)) is amended—

(A) by striking "or skilled nursing facility" and inserting in lieu thereof ", a skilled nursing facility, or an intermediate care facility",

(B) by striking "skilled nursing facility, rural health clinic" and inserting in lieu thereof "skilled nursing facility, intermediate care facility, rural health agency",

(C) by striking "facility, after" and inserting in lieu thereof "facility or intermediate care facility, after", and

(D) by inserting "or, in the case of an intermediate care facility, under title XIX" after "this title".

(2) Section 1864(a) of such Act, as amended by paragraph (1), is further amended by inserting, after "readily available form and place" in the fifth sentence, the following: ", and require (in the case of skilled nursing facilities and intermediate care facilities) the posting in a place readily accessible to residents (and residents' representatives),".

(3) Section 1106(e) of such Act (42 U.S.C. 1306(e)) is amended—

(A) by striking "60" the first place it appears and inserting in lieu thereof "30",

(B) by striking "report; nor" and inserting in lieu thereof "report. Nor",

(C) by striking "(e) No report" and inserting in lieu thereof "(e)(1) Except as provided in paragraph (2), no report", and

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

"(2) Notwithstanding the first sentence of paragraph (1), the Secretary may release a report described in subsection (d) to a State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) or a designee before the end of the 30-day period described in such sentence.".

(4) Section 1864 of such Act, as amended by paragraphs (1) and (2), is further amended by adding at the end thereof the following new subsection:

"(d)(1) Under each agreement under this section with a State with respect to determining whether an institution therein is a skilled nursing facility or an intermediate care facility, the State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of facilities (other than facilities of the State) with the applicable requirements of section 1861(j). The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State facilities with the applicable requirements of section 1861(j).

"(2)(A)(i) Each skilled nursing facility and intermediate care facility shall be subject to a standard survey of the facility's compliance with the applicable requirements of section 1861(j).

"(ii) A survey may be conducted upon any change of ownership and shall otherwise be conducted, on an unannounced basis, not later than 15 months after the date of the previous survey.

"(iii) The frequency with which surveys are conducted with respect to a facility shall be based upon the degree to which the facility was found, in the most recently conducted survey, to be in compliance with the applicable requirements of section 1861(j).

"(iv) The Statewide average interval between surveys of such facilities shall not exceed 12 months.

"(v) A survey shall include audits of a sample of the residents' assessments and plans of care provided under sections 1861(j)(5) and 1861(j)(8), respectively.

"(B) Each skilled nursing facility and intermediate care facility that is found to have performed poorly with regard to one or more of the applicable requirements of section 1861(j) shall be subject to an extended survey. Any other facility may, at the Secretary's or State's discretion under the agreement, be subject to such an extended survey.

"(C) All surveys shall be conducted based upon regulations the substance of which the Secretary has developed, tested, and validated.

"(3) Each State shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

"(4) Each State shall maintain procedures and adequate staff to investigate complaints of violations of applicable requirements by facilities.

"(5) The Secretary together with each State agency utilized under this section shall develop written procedures for review of survey findings in cases where the provider of services has substantial disagreement with such findings. Such procedures shall include a system for resolving significant differences in professional judgments about the appropriateness and quality of care (but in no event shall delay the timing of any enforcement action).

"(e)(1)(A) Not later than January 1, 1990, certification surveys under subsection (d) shall be conducted by a multidisciplinary

team of professionals (including a registered professional nurse and others selected in accordance with regulations of the Secretary).

"(B) Each State shall maintain and utilize a specialized survey team the duties of which shall include identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against chronically substandard facilities. Such a team shall include (or have prompt access to) an attorney, an auditor, and appropriate health care professionals.

"(2) Each member of a team described in paragraph (1) must receive comprehensive initial and continuing training (of not less than 40 hours annually) with respect to the conduct of such surveys (as approved by the Secretary).

"(3) No health care professional shall serve as a member of a team described in paragraph (1) unless he or she has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary and has experience or education in gerontological nursing or long-term care and in interviewing residents with communicative impairments.

"(4) No individual shall serve as a member of a team described in paragraph (1) if he or she is serving (or has served in the previous two years) as an employee of or consultant to the particular facility being surveyed.

"(f)(1) Each agency with an agreement with the Secretary under this section shall enter into a written agreement with the appropriate State long-term care ombudsman to provide for information exchange, training, case referral, and prompt notification of the ombudsman of any adverse action to be taken by the agency against a skilled nursing facility or intermediate care facility. Such agreement shall provide for access by the ombudsman to any inspection reports and notices of deficiencies, sanctions, or adverse determinations issued by the agency, and, consistent with Federal and State laws governing confidentiality of information, to investigative reports and findings made on account of complaints made by the ombudsman.

"(2) Each agency with an agreement with the Secretary under this section shall ensure that survey procedures are coordinated with the activities of State fraud and abuse units, resident protection and advocacy units, and the State agency under title XIX.

"(g) The Secretary shall develop and implement criteria and procedures for the evaluation of plans of correction submitted by institutions seeking compliance with the standards for skilled nursing facilities and intermediate care facilities. Such criteria and procedures shall be designed—

"(1) to maximize specificity in the plans,

"(2) to require on-site evaluation of the implementation of plans dealing with deficiencies relating to patient care, and

"(3) to emphasize the need for correction to provide for permanent compliance with the standards.

"(h)(1) Each year the Secretary shall conduct surveys of skilled nursing facilities and intermediate care facilities in each State in a sufficient number to allow inferences about the adequacy of each State's surveys conducted under subsection (d)(2).

"(2) Any survey conducted by the Secretary under paragraph (1) with respect to a facility shall be conducted within 1 month of the most recently conducted State survey with respect to that facility.

"(3) In no case shall the Secretary conduct surveys under paragraph (1) with respect to fewer than 5 percent of the facilities surveyed by the State in a year (or with respect to fewer than 5 facilities in each State).

"(4) If the results of a survey conducted by the Secretary under this subsection differ from the results of a survey conducted under subsection (d)(2), the results of the survey conducted by the Secretary shall be conclusive with respect to whether a facility complies with the applicable requirements of section 1861(j).

"(5) Not later than one year after the date of the enactment of this subsection, the Secretary shall by regulation prescribe—

"(A) performance and outcome standards to evaluate and assure the effectiveness of State survey activities (including standards to evaluate the general improvement in quality of care in certified facilities, how the findings from such activities compare with the Secretary's review findings, the appropriateness and effectiveness of State enforcement action, the extent to which repeat deficiencies occur, the extent to which deficiencies are not corrected in a timely manner, and complaint handling activities); and

"(B) administrative sanctions to be imposed on State survey agencies for poor performance (as determined under subparagraph (A)) in relation to the proportion of beneficiaries under this title placed at risk by such performance.

"(6) Each State, and the Secretary, shall make available to the public information with respect to all surveys and certifications made with respect to skilled nursing facilities and intermediate care facilities and information with respect to cost reports of such facilities filed under this title or under State plans approved under title XIX.".

(5) The amendments made by this subsection shall become effective January 1, 1990.

(d) ENFORCEMENT PROCESS.—

(1) Section 1866(f) of such Act (42 U.S.C. 1395cc(f)) is amended by adding at the end thereof the following new paragraphs:

"(4)(A)(i) The Secretary shall develop and implement a range of intermediate sanctions to apply to facilities which have been determined to meet the conditions described in (1)(B). Such sanctions shall include—

"(I) directed plans of correction,

"(II) the appointment of receivers in accordance with paragraph (5), and

"(III) one or more of the sanctions specified in clause (ii).

"(ii) The sanctions specified in this clause are—

"(I) civil fines,

"(II) on-site monitoring by an agency responsible for conducting certification surveys (with the costs of such monitoring to be paid by the facility without reimbursement),

"(III) withholding or reducing amounts otherwise payable to a facility under this title or such a plan, and

"(IV) any other sanction designated by the Secretary.

"(iii) The Secretary shall develop and implement specific criteria as to when and how each of these intermediate sanctions is to be applied, the amounts of any fines, and the severity of each of these penalties. These criteria shall be designed so as to minimize the time between identification of violations and final imposition of these sanctions and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies. In accordance with such criteria, the Secretary may impose any such sanction in lieu of, or in addition to, imposing the sanction otherwise provided under paragraph (1).

"(B) In any case where intermediate sanctions imposed by a State pursuant to section 1902(i)(4) are in effect with respect to a facility, the Secretary shall review periodically (not less than once every 3 months) the effectiveness of such sanctions in promoting the correction of the deficiencies involved and shall withhold action under this subsection unless the Secretary determines that such sanctions are ineffective or that the facility's deficiencies immediately jeopardize the health and safety of its patients.

"(5)(A) In any case where the Secretary determines that a skilled nursing facility is chronically failing to meet substantially the requirements of section 1861(j) or of the provider agreement, or determines that the facility's deficiencies immediately jeopardize the health and safety of its patients—

"(i) the Secretary shall give public notice of such determination, and

"(ii) in the case of a skilled nursing facility that is not in a period of State-ordered receivership (as defined in subparagraph (C)), the Secretary may appoint a receiver to—

"(I) oversee the operation of the facility;

"(II) establish and oversee the implementation of a correction plan to bring the facility into compliance with the applicable requirements of the State plan, this title, title XIX, and State licensing requirements by a date set forth in the correction plan; and

"(III) assure the health and safety of the facility's patients during the receivership period.

"(B) Subject to paragraph (1), payment shall be made under this title with respect to any services furnished by any such facility to patients who remain in such facility during any period of receivership ordered by the Secretary or the State with respect to such facility.

"(C) For purposes of this paragraph, a period of State-ordered receivership with respect to a facility is a period during which—

"(i) the State has appointed a receiver to oversee the operation of the facility;

"(ii) the State has in effect a correction plan to bring the facility into compliance with the applicable requirements of the State plan, this title, title XIX, and State licensing requirements by a date set forth in the correction plan; and

"(iii) the State has taken measures to assure the health and safety of the facility's patients during the period.

"(D) Public notice shall also be given in any case in which such deficiencies are determined to be rectified.".

(2) Section 1902(i) of such Act (42 U.S.C. 1396a(i)) is amended by adding at the end thereof the following new paragraphs:

"(4)(A) If a State determines that a skilled nursing facility or intermediate care facility (other than a facility providing services described in section 1905(d)) that is certified for participation under its plan no longer meets the applicable requirements of section 1861(j) and further determines that the facility's deficiencies do not immediately jeopardize the health and safety of its residents, the State may, instead of terminating the facility's participation under the plan, impose one or more of the sanctions developed in accordance with subparagraph (B).

"(B)(i) The State shall develop and implement a range of intermediate sanctions to apply to facilities that have been determined to meet the conditions described in (1)(B). Such sanctions shall include—

"(I) directed plans of correction,

"(II) the appointment of receivers in accordance with paragraph (5), and

"(III) one or more of the sanctions specified in clause (ii).

"(ii) The sanctions specified in this clause are—

"(I) civil fines,

"(II) on-site monitoring by an agency responsible for conducting certification surveys (with the costs of such monitoring to be paid by the facility without reimbursement),

"(III) withholding or reducing amounts otherwise payable to a facility, and

"(IV) any other sanction designated or approved by the Secretary.

"(iii) The State shall develop and implement specific criteria as to when and how each of these intermediate sanctions is to be applied, the amounts of any fines, and the severity of each of these penalties. These criteria shall be designed so as to minimize the time between identification of violations and final imposition of these sanctions and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In accordance with such criteria, the State may impose any such sanction in lieu of, or in addition to, imposing the sanction otherwise provided under paragraph (1).

"(5)(A) In any case where a State determines that a skilled nursing facility or an intermediate care facility (other than a facility providing services described in section 1905(d)) that is certified for participation under its plan is chronically failing to meet substantially the applicable requirements of section 1861(j) or of its agreement with the State, or determines that the facility's deficiencies immediately jeopardize the health and safety of its patients—

"(i) the State shall give public notice of such determination, and

"(ii) the State may appoint a receiver to—

"(I) oversee the operation of the facility;

"(II) establish and oversee the implementation of a correction plan to bring the facility into compliance with the applicable requirements of the title XIX, the State plan, section 1861(j), and State licensing requirements by a date set forth in the correction plan; and

"(III) assure the health and safety of the facility's patients during the receivership period.

"(B) Subject to paragraph (1), payment shall be made under this title with respect to any services furnished by any such facility to patients who remain in such facility during any period of receivership ordered by the Secretary or the State with respect to such facility.

"(C) Public notice shall also be given in any case in which such deficiencies are determined to be rectified.

"(6) The Secretary shall provide States with technical assistance in the development and implementation of the sanctions authorized by paragraphs (4) and (5).".

(3) The amendments made by this subsection shall become effective on October 1, 1990.

(e) LIST OF ITEMS AND SERVICES FURNISHED IN NURSING FACILITIES NOT CHARGEABLE TO THE PERSONAL FUNDS OF A RESIDENT.—

(1) The regulations required to be issued by the Secretary of Health, Education, and Welfare under section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 shall be issued by the Secretary of Health and Human Services on or before the first day of the seventh month to begin after the date of enactment of this Act.

(2) Notwithstanding any other provision of law, in the event the Secretary of Health and Human Services does not issue the regulations under paragraph (1) on or before such day, in the case of a resident of a facility (defined under section 1861(j) or 1905(c) of the Social Security Act) who is eligible to receive benefits under title XVIII of such Act or under a State plan under title XIX of such Act, the costs which may not be charged to the personal funds of such resident (and for which payment shall be made under title XVIII or XIX of such Act, as the case may be) shall include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

(f) CERTAIN ITEMS AND SERVICES COVERED UNDER MEDICARE AND STATE MEDICAID PLANS.—The Secretary of Health and Human Services (in this subsection referred to as the "Secretary"), in consultation (as appropriate) with the State agencies administering or responsible for the administration of State plans under title XIX of the Social Security Act, shall compile, with respect to each State with a plan approved under that title, a list of the scope and extent of skilled nursing facility services and intermediate care facility services that are covered under the plan and a list of the scope and extent of extended care services and post-hospital extended care services for which payment is made under title XVIII of such Act. The Secretary, acting through the State agency, shall make the first such list compiled with respect to a State available to individuals entitled to medical assistance under the State plan and to providers of the services to which the list applies and shall make the second such list compiled available to individuals receiving benefits under part A of such title XVIII and to providers of the services to which the list applies. The Secretary shall provide for each list to be updated periodically to reflect any changes in the services to which the list applies.

(g) NATIONAL COMMISSION ON LONG-TERM CARE.—

(1) Part A of title XI of such Act is amended by adding at the end thereof the following:

"NATIONAL COMMISSION ON LONG-TERM CARE

"SEC. 1139. (a) The Director of the Office of Technology Assessment (in this section referred to as the 'Director' and the 'Office', respectively) shall provide for the appointment of a National Commission on Long-Term Care (in this section referred to as the 'Commission'), to be composed of independent experts appointed by the Director (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service).

"(b)(1) The Commission shall consist of 13 members. Members of the Commission shall first be appointed no later than October 1, 1988, for a term of 5 years, except that the Director may provide initially for such shorter terms as will insure that (on a continuing basis) the terms of no more than 4 members expire in any one year.

"(2) The membership of the Commission shall provide expertise and experience in the provision and financing of long-term care. The Director shall seek nominations, and select at least one member of the Commission, from each of the following categories:

"(A) Representatives of Federal and State licensing and certification agencies.

"(B) Long-term care ombudsmen.

"(C) Consumers.

"(D) Representatives of organizations representing nursing homes.

"(E) Representatives of home health agencies.

"(F) Experts in long-term care policy.

"(G) Registered professional nurses.

"(H) Health care and allied professionals with experience relating to long-term care.

"(I) Individuals representing organizations of employees of skilled nursing facilities, intermediate care facilities, or home health agencies.

"(c) The provisions of subparagraphs (C), (D), (F), (G), (H), and (J) of section 1886(f)(6) shall apply to the Commission in the same manner and to the same extent that they apply to the Commission established under section 1886(f).

"(d)(1) The purpose of the Commission shall be advise the Congress with respect to—

"(A) methods of assessing and ensuring quality of care in long-term care facilities and home-care programs,

"(B) necessary and desirable changes in the programs for surveying and certifying such facilities and programs,

"(C) the costs, appropriate staffing, and reimbursement of such facilities and programs,

"(D) the effectiveness of Federal and State licensing and survey procedures and the enforcement of such procedures, and

"(E) maintaining and extending the access of individuals entitled to benefits under title XVIII or under a State plan approved under title XIX to long-term care and home health services (including the effects of State certificate of need requirements).

(2) In addition to carrying out its responsibilities pursuant to paragraph (1), the Commission shall investigate compliance with Federal medicaid requirements in any State that has low reimbursement rates for nursing home care and has moratorium on nursing home beds.

"(e) The Commission shall meet at least quarterly and shall convene such work groups, conferences, and public hearings as it considers necessary to assist it in carrying out its responsibilities.

"(f)(1) Not later than October 1, 1990, the Commission shall submit to the Congress and the Secretary of Health and Human Services (in this section referred to as the 'Secretary') a report setting forth recommendations with respect to—

"(A) the implementation of a system of reimbursement and staffing requirements for long-term care facilities under title XVIII of the Social Security Act that is based on the level of patient needs or the acuity of a patient's condition, or both, and

"(B) methods of ensuring the access of individuals entitled to benefits under title XVIII or under a State plan approved under title XIX to long-term care.

"(2) Not later than 9 months after the Commission submits its report under paragraph (1), the Secretary shall submit to the Congress proposed legislation to implement the recommendations set forth in such report.

"(g)(1) The Commission shall report annually to the Congress and the Secretary on the status of its studies and deliberations. The report shall set forth any recommendations that the Commission has developed in the preceding year with respect to matters relating to long-term care.

"(2) Not more than 90 days after the Commission submits a report under paragraph (1), the Secretary shall submit to the Congress a report setting forth the manner in which the Secretary proposes to implement any recommendations set forth in the

report of the Commission, accompanied by proposed changes in law (if any) that the Secretary determines to be necessary to implement the recommendations of the Commission.

"(h)(1) There are authorized to be appropriated, from the Federal Hospital Insurance Trust Fund, such sums as may be necessary to carry out the provisions of this section.

"(2) The Commission shall submit requests for appropriations in the same manner as the Office submits requests for appropriations, but amounts appropriated for the Commission shall be separate from amounts appropriated for the Office.".

(2) The Commission shall conduct a study of the compliance with Federal quality standards by nursing homes in States that the Commission selects that have low reimbursement rates for nursing homes under title XIX of the Social Security Act and have moratoria or limits in effect on the number of nursing home beds.

(h) FINAL REGULATIONS WITH RESPECT TO PLANS OF CORRECTION OR REDUCTION.—

(1) Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall promulgate final regulations to implement the amendments made by section 9516 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(2) The regulations promulgated under paragraph (1) shall be effective as if promulgated on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 4052. MEDICAID BENEFITS FOR POOR CHILDREN AND PREGNANT WOMEN.

(a) MEDICAID OPTIONAL COVERAGE FOR ADDITIONAL LOW-INCOME PREGNANT WOMEN AND CHILDREN.—Section 1902(l) of the Social Security Act (42 U.S.C. 1396a(1)) is amended—

(1) in paragraph (2)—

(A) by striking "(2) For purposes of paragraph (1)" and inserting in lieu thereof "(2)(A) For purposes of paragraph (1) with respect to individuals described in subparagraph (A) or (B) of that paragraph",

(B) by striking "100 percent" and inserting in lieu thereof "160 percent", and

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

"(B) If a State elects, under subsection (a)(10)(A)(ii)(IX), to cover individuals not described in subparagraph (A) or (B) of paragraph (1), for purposes of that paragraph and with respect to individuals not described in such subparagraphs the State shall establish an income level which is a percentage (not more than 100 percent, or, if less, the percentage established under subparagraph (A)) of the nonfarm income official poverty line described in subparagraph (A)."; and

(2) in paragraph (3)(D), by inserting "appropriate" after "applied is the".

(b) ALLOWING ACCELERATED COVERAGE OF CHILDREN UP TO AGE 5.—

(1) Section 1902(l)(1) of such Act (42 U.S.C. 1396a(l)(1)) is amended—

(A) by inserting "and" at the end of subparagraph (B), and

(B) by striking subparagraphs (C) through (F) and inserting in lieu thereof the following:

"(C) children born after September 30, 1983, and who have attained one year of age but have not attained 2, 3, 4, or 5 years of age (as selected by the State),".

(2) Section 1902(l) of such Act is further amended—

(A) in paragraph (3)(C), by striking ", (C), (D), (E), or (F)" and inserting in lieu thereof "or (C)", and

(B) in paragraph (4)(B)(ii), by striking ", (D), (E), or (F)".

(3) Section 1902(e)(7) of such Act (42 U.S.C. 1396a(e)(7)) is amended by striking ", (C), (D), (E), or (F)" and inserting in lieu thereof "or (C)".

(4) Section 9401(f)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "(A)" after "(2)" and by striking subparagraphs (B) through (D).

(c) COVERAGE OF CHILDREN UP TO AGE 8.—

(1) Section 1905(n)(2) of such Act (42 U.S.C. 1396d(n)(2)) is amended by striking "is under 5 years of age" and inserting in lieu thereof "has not attained the age of 6 (or any age designated by the State that exceeds 6 but does not exceed 8)".

(2) Section 1902(l)(1)(C) of such Act, as amended by subsection (b)(1)(B), is further amended by striking "or 5 years" and inserting in lieu thereof "5, 6, 7, or 8 years".

(d) PREMIUM.—Section 1916 of the Social Security Act (42 U.S.C. 1396o) is amended—

(1) in subsection (a)(1), by inserting "(except for a premium imposed under subsection (c))" before the semicolon;

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following new subsection:

"(c)(1) The State plan of a State shall provide for imposing a monthly premium of $5 with respect to an individual described in subparagraph (A) or (B) of section 1902(l)(1) who is receiving medical assistance on the basis of section 1902(a)(10)(A)(ii)(IX) and whose family income (as determined in accordance with the methodology specified in section 1902(l)(3)) equals or exceeds 130 percent of the nonfarm income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(2) A State shall not require prepayment of a premium imposed pursuant to paragraph (1) and shall not terminate eligibility of an individual for medical assistance under this title on the basis of failure to pay any such premium until such failure continues for a period of not less than 60 days. The State may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

"(3) A State may permit State or local funds available under other programs to be used for payment of a premium imposed under paragraph (1). Payment of a premium with such funds shall not be counted as income to the individual with respect to whom such payment is made.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to medical assistance furnished on or after July 1, 1988.

(f) CERTIFICATION OF MEDICAID ELIGIBILITY FOR NEWBORN INFANTS.—Section 1902(e)(4) of the Social Security Act (42 U.S.C. 1396a(e)(4)) is amended by adding at the end thereof the following new sentence: "During the period in which a child is deemed under the preceding sentence to be eligible for medical assistance, the medical assistance eligibility identification number of the mother shall also serve as the identification number of the child, and all provider claims shall be submitted and paid under such number (unless the State issues a separate identification number for the child before such period expires).".

(g) STUDY AND REPORT ON THE MEDICAL EXPENSES OF FAMILIES WITH CHILDREN WITH SPECIAL HEALTH CARE NEEDS.—The Office of Technology Assessment shall conduct a study and report to Congress, not later than August 1, 1988, on—

(1) the number of children age 18 and under who have high-cost medical expenses exceeding $25,000 in a single year and who have a chronic illness or disability which results in their being developmentally delayed or in their inability to perform one or more normal childhood activities;

(2) the aggregate medical expenses of such children in a single year;

(3) the medical diagnosis or diagnoses of children incurring such expenses;

(4) the age of such children at the onset of major chronic illnesses or disabilities (and the expected duration of such illness or disabilities);

(5) the sources and extent of payment of such medical expenses;

(6) the insurance status and adequacy of insurance coverage for such children, including out-of-pocket liability;

(7) the relation of such out-of-pocket liability to family adjusted gross income;

(8) the causes of out-of-pocket liability, including uninsured or inadequately insured services, copayments, premiums, deductibles, and changes in insurance coverage over the course of the child's treatment; and

(9) the demographic profile of families with such children, including—

(A) family size and composition, including number of parents and children;

(B) race, age, educational status, employment status, and marital status of parents;

(C) age of each child in the family and total amount of medical expenses for each child with a chronic illness or disability which results in inability to perform a major normal, childhood life activity;

(D) geographic distribution of families with such children; and

(E) impact of the expenses of medical care for such children on family financial stability.

SEC. 4053. WAIVER AUTHORITY UNDER THE MEDICAID PROGRAM FOR THE NORTHERN MARIANA ISLANDS.

Section 1902(j) of the Social Security Act (42 U.S.C. 1396a(j)) is amended—

(1) by inserting "and the Northern Mariana Islands" after "American Samoa" the first place it appears; and

(2) by inserting "or the Northern Mariana Islands" after "American Samoa" the second place it appears.

SEC. 4054. FEDERAL REVIEW OF STATE INSPECTION OF CARE (IOC) DETERMINATIONS.

(a) IN GENERAL.—Section 1903(g)(2) of the Social Security Act (42 U.S.C. 1396b(g)(2)) is amended—

(1) by inserting "(A)" after "(2)"; and

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

"(B)(i) The Secretary may, in such cases as he finds appropriate, conduct an independent medical review of the care of patients in mental facilities, skilled nursing facilities, or intermediate care facilities, including an assessment of the appropriateness of the State's determination under paragraph (1) of level of care requirements, the adequacy of the services provided, and the State's efforts in communicating deficiencies to the facility and assuring corrective action. If the Secretary finds, following

the conduct of an independent medical review, that the State has failed to perform an effective medical review, Federal financial participation shall not be available with respect to care provided by the facility involved for patients for whom and during the period for which the review was found to be ineffective. Where the Secretary's review is based upon sampling procedures, the findings of such review may be projected to all parties similarly situated in the State.

"(ii) For purposes of clause (i), a State's program of medical review of the care of patients referred to therein shall not be considered to be an effective program unless it includes provision, found adequate by the Secretary, for the development of a corrective action plan for each facility with respect to which deficiencies were noted and a description of the steps that will be taken by the State in the case of each such plan that is developed to assure that the facility acts expeditiously to implement such plan and correct the deficiencies addressed therein. The corrective action plan must address both deficiencies in services provided to individual patients and deficiencies of the facility generally.".

(b) UTILIZATION CONTROL PENALTY.—Section 1903(g)(4) of such Act (42 U.S.C. 1396b(g)(4)) is amended by adding at the end the following new subparagraph:

"(C) The Secretary shall not find a showing of a State unsatisfactory, with respect to the requirement to conduct annual onsite inspections in mental hospitals, skilled nursing facilities, and intermediate care facilities under paragraphs (26) and (31) of section 1902(a), for failure to review the care of each person receiving medical assistance (or, as permitted by the Secretary, each person in a sample group of such individuals) where the showing demonstrates, with respect to each institution subject to this requirement, that the State did not fail to meet the requirement with respect to more than—

"(i) (in the case of an institution with more than one, but fewer than fifty-one such patients) the lesser of ten such individuals or two percent of the total number of such individuals in the institution, or

"(ii) (in the case of an institution with fifty or fewer such patients) one individual.".

(c) The amendments made by this section shall become effective on January 1, 1988.

SEC. 4055. PROVISION OF FAMILY PLANNING SERVICES TO INDIVIDUALS ENROLLED WITH A HEALTH MAINTENANCE ORGANIZATION.

(a) STATE PLAN REQUIREMENT.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (46);

(2) by striking the period at the end of paragraph (47) added by section 9407(a) of the Omnibus Budget Reconciliation Act of 1986 and inserting a semicolon and transferring and inserting such paragraph after paragraph (46);

(3) by striking the period at the end of the paragraph (47) added by section 11005(b) of the Anti-Drug Abuse Act of 1986 and inserting "; and", by redesignating such paragraph as paragraph (48), and by transferring and inserting such paragraph after paragraph (47); and

(4) by inserting after paragraph (48) the following new paragraph:

"(49) provide that, notwithstanding any other provision of this title, an individual enrolled with a health maintenance organization under this title shall be permitted to receive family planning services under the plan from any qualified provider.".

(b) CONFORMING AMENDMENT.—Section 1902(e)(2)(A) of such Act (42 U.S.C. 1396a(e)(2)(A)) is amended by striking "but only" and inserting in lieu thereof "but, subject to subsection (a)(49), only".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services furnished on or after the date of enactment of this Act.

SEC. 4056. OPTIONAL MEDICAID COVERAGE OF INDIVIDUALS IN CERTAIN STATES RECEIVING ONLY OPTIONAL STATE SUPPLEMENTARY PAYMENTS.

Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

(1) by striking "or" at the end of subclause (IX) and inserting "or" at the end of subclause (X); and

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

"(XI) who receive only an optional State supplementary payment based on need and paid on a regular basis, equal to the difference between the individual's countable income and the income standard used to determine eligibility for such supplementary payment (with countable income being the income remaining after deductions as established by the State), which are available to all individuals in the State (but which may be based on different income standards by political subdivision according to cost of living differences), and which are paid by a State that does not have an agreement with the Secretary under section 1634.".

Subpart VI—Social Services and Income Security

SEC. 4061. INCREASED FUNDING FOR SOCIAL SERVICES BLOCK GRANT; EXTENSION OF SOCIAL SERVICES AND CHILD WELFARE SERVICES TO AMERICAN SAMOA.

(a) INCREASED FUNDING FOR SOCIAL SERVICES BLOCK GRANT.—Section 2003(c) of the Social Security Act (42 U.S.C. 1397b(c)) is amended—

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

(2) in paragraph (3), by striking "year" the first place it appears and all that follows through the period and inserting in lieu thereof "years 1984, 1985, 1986, and 1987, and each succeeding fiscal year other than the fiscal year 1988; and"; and

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

"(4) $2,750,000,000 for the fiscal year 1988.".

(b) INCLUSION OF AMERICAN SAMOA IN SOCIAL SERVICES BLOCK GRANT PROGRAM.—

(1) Section 1101(a)(1) of the Social Security Act (42 U.S.C. 1301(a)(1)) is amended in the last sentence by inserting "American Samoa," after "Guam,".

(2)(A) Section 2003(a) of the Social Security Act (42 U.S.C. 1397b(a)) is amended by adding at the end thereof the following new sentence: "The allotment for fiscal year 1988 and each succeeding fiscal year to American Samoa shall be an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands for that fiscal year as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.".

(B) Section 2003(b) of such Act (42 U.S.C. 1397b(b)) is amended by inserting "American Samoa," after "the Virgin Islands," each place it appears.

(c) INCLUSION OF AMERICAN SAMOA IN CHILD WELFARE SERVICES PROGRAM.—

(1) Section 1101(a)(1) of such Act (42 U.S.C. 1301(a)(1)) is amended by adding at the end thereof the following new sentence: "Such term when used in part B of title IV also includes American Samoa.".

(2) Section 421(b) of such Act (42 U.S.C. 621(b)) is amended by striking "and Guam" and inserting in lieu thereof "Guam, and American Samoa".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 1987.

SEC. 4062. 2-YEAR EXTENSION OF FOSTER CARE CEILING AND OF AUTHORITY TO TRANSFER FOSTER CARE FUNDS TO CHILD WELFARE SERVICES.

(a) IN GENERAL.—Section 474 of the Social Security Act (42 U.S.C. 674) is amended—

(1) in paragraphs (1), (2)(A)(iii), (2)(B), (4)(B), and (5)(A)(ii) of subsection (b), by striking out "through 1987" and inserting in lieu thereof "through 1989";

(2) in paragraph (5)(A) of subsection (b) (in the matter preceding clause (i)), by striking out "October 1, 1987" and inserting in lieu thereof "October 1, 1989"; and

(3) in paragraphs (1) and (2) of subsection (c), by striking out "through 1987" and inserting in lieu thereof "through 1989".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on October 1, 1987.

SEC. 4063. PERMANENT EXTENSION OF AUTHORITY FOR VOLUNTARY FOSTER CARE PLACEMENTS.

(a) Section 102 of the Adoption Assistance and Child Welfare Act of 1980 is amended—

(1) in subsection (a)(1) (in the matter preceding subparagraph (A)), by striking out "and before October 1, 1987,";

(2) in subsection (c), by striking out all that follows "September 30, 1979" and inserting in lieu thereof a period; and

(3) in subsection (e), by striking "with respect to which the amendments made by this section are in effect".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on October 1, 1987.

SEC. 4064. MOTHER/INFANT FOSTER CARE.

(a) IN GENERAL.—Section 475(4) of the Social Security Act (42 U.S.C. 675(4)) is amended—

(1) by inserting "(A)" after "(4)"; and

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

"(B) In cases where—

"(i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and

"(ii) payments described in subparagraph (A) are being made under this part with respect to such child,

the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter.".

(b) CONFORMING AMENDMENTS RELATING TO ELIGIBILITY UNDER OTHER PROGRAMS.—

(1) Section 402(a)(24) of such Act (42 U.S.C. 602(a)(24)) is amended by striking "if an individual is receiving benefits under title XVI, then, for the period for which such benefits are received," and inserting in lieu thereof the following: "if an individual is receiving benefits under title XVI or his costs in a foster family home or child-care institution are covered by the foster care

maintenance payments being made with respect to his or her minor parent as provided in section 475(4)(B), then, for the period for which such benefits are received or such costs are so covered,".

(2) Section 472(h) of such Act (42 U.S.C. 672(h)) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 475(4)(B), shall be considered a child with respect to whom foster care maintenance payments are made under this section.".

(3)(A) Section 473(a)(2)(A) of such Act (42 U.S.C. 673(a)(2)(A)) is amended—

(i) by striking "or" at the end of clause (i);

(ii) by adding "or" at the end of clause (ii); and

(iii) by adding after clause (ii) the following new clause:

"(iii) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent as provided in section 475(4)(B),".

(B) Section 473(a)(2)(B)(iii) of such Act (42 U.S.C. 673(a)(2)(B)(iii)) is amended by inserting "or (A)(iii)" after "(A)(ii)".

(4) Section 473(b) of such Act (42 U.S.C. 673(b)) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 475(4)(B), shall be considered a child with respect to whom foster care maintenance payments are being made under section 472.".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4065. INCREASE IN PERSONAL NEEDS ALLOWANCE FOR SSI RECIPIENTS.

(a) INCREASE IN STANDARD.—Section 1611(e)(1)(B) of the Social Security Act (42 U.S.C. 1382(e)(1)(B)) is amended—

(1) by striking "$300 per year" in clauses (i) and (ii)(I) and inserting "$360 per year"; and

(2) by striking "$600 per year" in clause (iii) and inserting "$720 per year".

(b) MANDATORY PASS-THROUGH OF INCREASED PERSONAL NEEDS ALLOWANCE.—Section 1618 of such Act is amended by adding at the end the following new subsection:

"(g) In order for any State which makes supplementary payments of the type described in section 1616(a) (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66) to recipients of benefits determined under section 1611(e)(1)(B), on or after October 1, 1987, to be eligible for payments pursuant to title XIX with respect to any calendar quarter which begins—

"(1) after October 1, 1987, or, if later

"(2) after the calendar quarter in which it first makes such supplementary payments to recipients of benefits so determined,

such State must have in effect an agreement with the Secretary whereby the State will—

"(3) continue to make such supplementary payments to recipients of benefits so determined, and

"(4) maintain such supplementary payments to recipients of benefits so determined at levels which assure (with respect to any particular month beginning with the month in which this subsection is first effective) that—

"(A) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1611(e)(1)(B) for that particular month,

is not less than—

"(B) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1611(e)(1)(B) for October 1987 (or, if no such supplementary payments were made for that month, the combined level for the first subsequent month for which such payments were made), increased—

"(i) in a case to which clause (i) of such section 1611(e)(1)(B) applies or (with respect to the individual or spouse who is in the hospital, home, or facility involved) to which clause (ii) of such section applies, by $5, and

"(ii) in a case to which clause (iii) of such section 1611(e)(1)(B) applies, by $10.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall become effective on July 1, 1988.

SEC. 4066. INCREASE IN SSI EMERGENCY ADVANCE PAYMENTS.

(a) IN GENERAL.—Section 1631(a)(4)(A) of the Social Security Act (42 U.S.C. 1383(a)(4)(A)) is amended by striking "a cash advance against such benefits in an amount not exceeding $100" and inserting in lieu thereof "a cash advance against such benefits, including any federally administered State supplementary payments, in an amount not exceeding the monthly amount that would be payable to an eligible individual with no other income for the first month of such presumptive eligibility".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4067. AUTHORITY OF SECRETARY TO SUSPEND PENALTY FOR TRANSFERRING ASSETS FOR LESS THAN FAIR MARKET VALUE.

(a) IN GENERAL.—Section 1613(c) of the Social Security Act (42 U.S.C. 1382b(c)) is amended—

(1) by inserting immediately after "the exclusions under subsection (a)" in paragraph (1) the following: "and subject to paragraph (4) of this subsection"; and

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

"(4) The Secretary shall by regulation provide for suspending the application of paragraph (1) to the extent (in any instance) that the Secretary determines that such suspension is necessary to avoid undue hardship.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4068. DISREGARD OF AFDC UNDER SSI RETROSPECTIVE ACCOUNTING.

(a) IN GENERAL.—Section 1612(b)(6) of the Social Security Act (42 U.S.C. 1382a(b)(6)) is amended by striking "assistance" and inserting in lieu thereof "payments of aid to families with dependent children under a State plan approved under section 402, and assistance".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4069. EXCLUSION OF REAL PROPERTY WHEN IT CANNOT BE SOLD.

(a) IN GENERAL.—Section 1613(b) of the Social Security Act (42 U.S.C. 1382b(a)) is amended—

(1) by inserting "(1)" after "(b)"; and

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

"(2) Notwithstanding the provisions of paragraph (1), the Secretary shall not require the disposition of any real property for so long as it cannot be sold because (i) it is jointly owned (and its sale would cause undue hardship, due to loss of housing, for the other owner or owners), (ii) its sale is barred by a legal impediment, or (iii) as determined under regulations issued by the Secretary, the owner's reasonable efforts to sell it have been unsuccessful.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4070. EXCLUSION OF INTEREST ON BURIAL ACCOUNTS.

(a) IN GENERAL.—Section 1613(d) of the Social Security Act (42 U.S.C. 1382b(d)) is amended—

(1) in paragraph (1), by striking "(if" and all that follows and inserting in lieu thereof a period; and

(2) in paragraph (3), by striking "aside" and inserting in lieu thereof "aside in cases where the inclusion of any portion of the amount would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1611(a)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4071. PERMANENT EXTENSION OF DISREGARD OF IN-KIND ASSISTANCE TO SSI AND AFDC RECIPIENTS.

(a) IN GENERAL.—Section 2639(d) of the Deficit Reduction Act of 1984 is amended by striking "; but" and all that follows and inserting a period.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as if included in the enactment of the Deficit Reduction Act of 1984.

SEC. 4072. EXCLUSION OF DEATH BENEFITS TO THE EXTENT SPENT ON LAST ILLNESS AND BURIAL.

(a) IN GENERAL.—Subparagraphs (D) and (E) of section 1612(a)(2) of the Social Security Act (42 U.S.C. 1382a(a)(2)) are amended to read as follows:

"(D) payments to the individual occasioned by the death of another person, to the extent that the total of such payments exceeds the amount expended by such individual for purposes of the deceased person's last illness and burial;

"(E) support and alimony payments, and (subject to the provisions of subparagraph (D) excluding certain amounts expended for purposes of a last illness and burial) gifts (cash or otherwise) and inheritances; and".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4073. CONTINUATION OF FULL BENEFIT STANDARD FOR INDIVIDUALS TEMPORARILY INSTITUTIONALIZED.

(a) IN GENERAL.—Section 1611(e)(1) of the Social Security Act (42 U.S.C. 1382(e)(1)) is amended—

(1) in subparagraph (A), by striking "and (E)" and inserting in lieu thereof "(E), and (G)";

(2) in subparagraph (B), by inserting in lieu thereof "(subject to subparagraph (G))" after "throughout any month"; and

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

"(G) A person may be an eligible individual or eligible spouse for purposes of this title, and subparagraphs (A) and (B) shall not apply, with respect to any particular month throughout which he or she is an inmate of a public institution, the primary purpose of which is the provision of medical or psychiatric care, or is in a hospital, extended care facility, nursing home, or intermediate care facility receiving payments (with respect to such individual or spouse) under a State plan approved under title XIX, if it is determined in accordance with subparagraph (G) that—

"(i) such person's stay in that institution or facility (or in that institution or facility and one or more other such institutions or facilities during a continuous period of institutionalization) is likely (as certified by a physician) not to exceed 3 months, and the particular month involved is one of the first 3 months throughout which such person is in such an institution or facility during a continuous period of institutionalization; and

"(ii) such person needs to continue to maintain and provide for the expenses of the home or living arrangement to which he or she may return upon leaving the institution or facility.

The benefit of any person under this title (including State supplementation if any) for each month to which this subparagraph applies shall be payable, without interruption of benefit payments and on the date the benefit involved is regularly due, at the rate that was applicable to such person in the month prior to the first month throughout which he or she is in the institution or facility.

"(H) The Secretary shall establish procedures for the determinations required by clauses (i) and (ii) of subparagraph (G), and may enter into agreements for making such determinations (or for providing information or assistance in connection with the making of such determinations) with appropriate State and local public and private agencies and organizations. Such procedures and agreements shall include the provision of appropriate assistance to individuals who, because of their physical or mental condition, are limited in their ability to furnish the information needed in connection with the making of such determinations.".

(b) CONFORMING AMENDMENT.—Section 1902(l) of such Act (42 U.S.C. 1396a(l)) is amended by striking "1611(e)(1)(E)" and inserting "subparagraph (E) or (G) of section 1611(e)(1)".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on July 1, 1988.

SEC. 4074. TREATMENT OF CERTAIN COUPLES IN MEDICAL INSTITUTIONS.

(a) IN GENERAL.—Section 9 of Public Law 99-643 is amended—

(1) by striking "sharing a room or comparable accommodation in a" and inserting "living in the same"; and

(2) by striking "shared such a room or accommodation" and inserting "lived in the same such hospital, home, or facility".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4075. EXTENDING FROM 3 TO 6 THE NUMBER OF MONTHS THAT AN INDIVIDUAL IN A PUBLIC EMERGENCY SHELTER CAN BE ELIGIBLE FOR SSI.

(a) IN GENERAL.—Section 1611(e)(1)(D) of the Social Security Act (42 U.S.C. 1382(e)(1)(D)) is amended by striking "three months in any 12-month period" and inserting in lieu thereof "6 months in any 9-month period".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4076. SPECIAL NOTICE TO BLIND SSI RECIPIENTS.

(a) IN GENERAL.—

(1) Section 1631 of the Social Security Act (42 U.S.C. 1383) is amended by adding at the end the following new subsection:

"Special Notice to Blind Individuals with Respect to Hearings and Other Official Actions

"(l)(1) In any case where an individual who is applying for or receiving benefits under this title on the basis of blindness is entitled (under subsection (c) or otherwise) to receive notice from the Secretary of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this title, such individual shall at his or her election be entitled (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, (B) to receive the initial notice in the form of a certified letter, or (C) to receive notification by some alternative procedure established by the Secretary and agreed to by the individual.

"(2) The election under paragraph (1) may be made at any time; but an opportunity to make such an election shall in any event be given (A) to every individual who is an applicant for benefits under this title on the basis of blindness, at the time of his or her application, and (B) to every individual who is a recipient of such benefits on the basis of blindness, at the time of each redetermination of his or her eligibility. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this title until such time as it is revoked or changed.".

(2) Not later than one year after the date on which the amendment made by paragraph (1) becomes effective, the Secretary of Health and Human Services shall provide every individual receiving benefits under title XVI of the Social Security Act on the basis of blindness an opportunity to make the election under section 1631(l)(1) of such Act (as added by such amendment).

(b) STUDY.—The Secretary of Health and Human Services shall study the desirability and feasibility of extending special or supplementary notices of the type provided to blind individuals by section 1631(l) of the Social Security Act (as added by subsection (a) of this section) to other individuals who may lack the ability to read and comprehend regular written notices, and shall report the results of such study to the Congress, along with such recommendations as may be appropriate, within 12 months after the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4077. REHABILITATION SERVICES FOR BLIND SSI RECIPIENTS.

(a) IN GENERAL.—Section 1631(a)(6) of the Social Security Act (42 U.S.C. 1383(a)(6)) is amended—

(1) by inserting "blindness (as determined under section 1614(a)(2)) or" before "disability (as determined under section 1614(a)(3))";

(2) by inserting "blindness or other" before "physical or mental impairment"; and

(3) by inserting "blindness and" before "disability benefit rolls" in subparagraph (B).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4078. RETENTION OF MEDICAID WHEN SSI BENEFITS ARE LOST UPON ENTITLEMENT TO EARLY WIDOW'S OR WIDOWER'S INSURANCE BENEFITS.

(a) IN GENERAL.—Section 1634 of the Social Security Act (42 U.S.C. 1383c) is amended by adding at the end thereof the following new subsection:

"(d) If any person—

"(1) applies for and obtains benefits under subsection (e) or (f) of section 202 (or under any other subsection of section 202 if such person is also eligible for benefits under such subsection (e) or (f)) as required by subsection 1611(e)(2), being then at least 60 years of age but not entitled to hospital insurance benefits under part A of title XVIII, and

"(2) is determined to be ineligible (by reason of the receipt of such benefits under section 202) for supplemental security income benefits under this title or for State supplementary payments of the type described in section 1616(a),

such person shall nevertheless be deemed to be a recipient of supplemental security income benefits under this title for purposes of title XIX, so long as he or she (A) would be eligible for such supplemental security income benefits, or such State supplementary payments, in the absence of such benefits under section 202, and (B) is not entitled to hospital insurance benefits under part A of title XVIII.".

(b) NOTICE.—The Secretary of Health and Human Services, acting through the Social Security Administration, shall (within 3 months after the date of the enactment of this Act) issue a notice to all individuals who have attained age 60 but not age 65 as of October 1, 1987, and who received supplemental security income benefits under title XVI of the Social Security Act prior to attaining age 60 but lost those benefits by reason of the receipt of widow's or widower's insurance benefits (or other benefits as described in section 1634(d)(1) of that Act as added by subsection (a) of this section) under title II of that Act. Each such notice shall inform the individual that he or she should contact the Secretary or the appropriate State agency concerning his or her possible eligibility for medical assistance benefits under such title XIX.

(c) STATE DETERMINATIONS.—Any determination required under section 1634(d) of the Social Security Act with respect to whether an individual would be eligible for benefits under title XVI of such Act (or State supplementary payments) in the absence of benefits under section 202 shall be made by the appropriate State agency.

(d) CONFORMING AMENDMENTS.—Section 1921(a)(2) of such Act (42 U.S.C. 1396s(a)(2)) is amended—

(1) by striking "1634" in the second subparagraph (B) and inserting in lieu thereof "1634(c)"; and

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

"(D) Section 1634(d) of this Act (relating to individuals who lose eligibility for SSI benefits due to entitlement to early widow's or widower's insurance benefits under section 202(e) or (f) of this Act).".

(e) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to any individual without regard to whether the determination of his or her ineligibility for supplemental security income benefits by reason of the receipt of benefits under section 202 of the Social Security Act (as described in section 1634(d)(2) of such Act) occurred before, on, or after the date of the enactment of this Act; but no individual shall be eligible for assistance under title XIX of such Act by reason of such amendments for any period before the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4079. EXTENSION OF DEADLINE FOR DISABLED WIDOWS AND WIDOWERS TO APPLY FOR MEDICAID PROTECTION.

Section 1634(b)(3) of the Social Security Act (42 U.S.C. 1383c(b)(3)) is amended by striking "during the 15-month period beginning with the month in which this subsection is enacted" and inserting "no later than July 1, 1988".

PART B—OTHER PROVISIONS

Subpart I—Medicare Provisions

SEC. 4081. HOME HEALTH AND SKILLED NURSING FACILITY PROVISIONS.

(a) HOME HEALTH TOLL-FREE HOTLINE AND INVESTIGATIVE UNIT.—

(1) Section 1864(a) of the Social Security Act (42 U.S.C. 1395aa(a)) is amended by adding at the end thereof the following:

"Any agreement under this subsection shall provide for the appropriate State or local agency to maintain a toll-free hotline (1) to collect, maintain, and continually update information on home health agencies located in the State or locality that are certified to participate in the program established under this title (which information shall include any significant deficiencies found with respect to patient care in the most recent certification survey conducted with respect to the agency, when that survey was completed, whether corrective actions have been taken or are planned, and the sanctions, if any, imposed under this title with respect to the agency) and (2) to receive complaints (and answer questions) with respect to home health agencies in the State or locality. Any such agreement shall provide for such agency to maintain a unit for investigating such complaints that possesses enforcement authority and has access to consumer medical records and survey reports.".

(2) The amendment made by paragraph (1) shall apply with respect to agreements entered into or renewed on or after the date of enactment of this Act.

(b) PUBLICATION OF POLICIES.—

(1) IN GENERAL.—Section 1871 of the Social Security Act (42 U.S.C. 1395hh) is amended by adding at the end thereof the following new subsection:

"(c)(1) Effective June 1, 1988, each fiscal intermediary and carrier administering claims for extended care, post-hospital extended care, home health care, and durable medical equipment benefits under this title shall make available to the public all interpretative materials, guidelines, and clarifications of policies which relate to payments for such benefits.

"(2) Effective June 1, 1988, the Secretary shall publish in the Federal Register, not less frequently than every three months, a list indicating the subject matter of all such new home health care, extend care, post-hospital extended care, and durable medical equipment coverage instructions and clarifications that have been furnished in the preceeding 3 months to fiscal intermediaries, carriers or service providers, as well as interpretative rules, and statements of policy or changes therein, issued or used by the Secretary, and by fiscal intermediaries or carriers.

"(3) The Secretary shall only change policies or establish standards for payment under this title, and the Secretary or his fiscal intermediaries or carriers shall only issue additional instructions, clarifications, rules, statements, and guidelines for extended care, post-hospital extended care, home health care, or durable medical equipment by written statement, made available to all affected fiscal intermediaries, carriers, and service providers (and to the Secretary when such additional statement is made by a fiscal intermediary or carrier). Any such statement shall only have effect with respect to claims submitted 30 days after its full text has been made available pursuant to paragraph (2).

"(4) The Secretary shall ensure that the practices of fiscal intermediaries and carriers regarding payments under this title are consistent with each other and, to the maximum extent possible, are clearly understood by service providers and beneficiaries. The Secretary, shall periodically consult with representatives of beneficiaries, service providers, fiscal intermediaries and carriers, shall update, and clarify, as necessary, existing policies regarding skilled nursing and home health care to meet such goals.

"(5)(a) The Secretary shall to the extent feasible make such changes in automated data collection and retrieval by the Secretary and his fiscal intermediaries as are necessary to make easily accessible for the Secretary and other appropriate parties a data base which fairly and accurately reflects the provision of extended care, post-hospital extended care and home health care benefits pursuant to this title, including such categories as benefit denials, results of appeals, and other relevant factors, and selectable by such categories and by fiscal intermediary, service provider, and region.".

(2) REPORT.—Not later than six months after the date of enactment of this Act, the Secretary shall report to Congress on the feasibility of including in the data base required under section 1871(c)(5) of the Social Security Act, as added by the amendment made by paragraph (1) diagnoses (or groups of them), length of coverage, and reimbursements.

(c) CONDITIONS OF PARTICIPATION AND SURVEY PROCESS FOR HOME HEALTH AGENCIES.—

(1)(A) Section 1861(o)(6) of the Social Security Act (42 U.S.C. 1395x(o)(6)) is amended by inserting "the conditions of participation specified in section 1892(a) and" after "meets".

(B) Title XVIII is amended by adding at the end thereof the following new section:

"CONDITIONS OF PARTICIPATION FOR HOME HEALTH AGENCIES; HOME HEALTH QUALITY

"SEC. 1892. (a) The conditions of participation that a home health agency is required to meet under this subsection are as follows:

"(1) The agency protects and promotes the rights of each individual under its care, including each of the following rights:

"(A) The right to be fully informed about care and treatment, to participate (where appropriate) in planning care and treatment, and to be fully informed in advance of any changes in care or treatment that may affect the individual's well-being.

"(B) The right to voice grievances with respect to treatment or care that is (or fails to be) furnished without suffering discrimination or reprisal.

"(C) The right to have one's property treated with respect.

"(D) The right to be informed orally and in writing (in advance of coming under the care of the agency) of—

"(i) all items and services furnished by (or under arrangements with) the agency for which payment may be made under this title,

"(ii) the coverage available for such items and services under this title, title XIX, and any other Federal program of which the agency is reasonably aware, and

"(iii) any charges the individual may have to pay with respect to items and services furnished by (or under arrangements with) the agency.

"(2)(A) The agency promptly provides the State entity responsible for the licensing of such agency with the name and social security account number of any individual hired by the agency to provide care and discloses to such entity whether such individual has ever been convicted of a felony.

"(B) The agency promptly informs such entity of a change in the persons with an ownership or control interest (as defined in section 1124(a)(3)) in the agency.

"(3) The agency only provides items and services described in section 1861(m) (except for medical supplies and durable medical equipment) on or after October 1, 1989, through persons who are licensed health professionals or have successfully completed or are enrolled in and making timely progress in completing a training program that meets minimum standards established by the Secretary. The Secretary shall ensure that durable medical equipment suppliers are properly trained in the demonstration and use of the equipment that they supply to home health agencies. The Secretary shall establish such standards not later than July 1, 1988.

"(4) The clinical records described in section 1861(o)(3) with respect to an individual include the individual's plan of care required under section 1861(m).

"(5) The agency operates and provides services in compliance with all applicable Federal, State, and local laws and regulations and with all accepted professional standards and principles.

"(b) It is the responsibility of the Secretary to assure that the conditions of participation and requirements specified in or pursuant to section 1861(o) are adequate to protect the health and safety of individuals under the care of a home health agency and to promote the effective and efficient operation of the program.".

(C) Except as otherwise provided, the amendments made by this paragraph shall

apply to home health agencies as of the first day of the eighteenth calendar month that begins after the date of enactment of this Act.

(2)(A) Section 1892 (as added by paragraph (1)) is amended by adding at the end thereof the following new subsections:

"(c)(1) Any agreement entered into or renewed by the Secretary pursuant to section 1864 relating to home health agencies shall provide that the appropriate State or local agency shall conduct a standard survey of each home health agency.

"(2)(A) Except as provided in subparagraph (B), the standard survey shall be conducted with respect to each home health agency not earlier than 9 months and not later than 15 months after the date of the most recently completed survey conducted with respect to that agency.

"(B) In addition to a standard survey conducted under subparagraph (A), a standard survey of an agency shall be promptly conducted upon—

"(i) a change of ownership of the agency, or

"(ii) a significant number of complaints with respect to the agency.

"(C) A standard survey conducted under this paragraph with respect to a home health agency—

"(i) may be made with or without advance notice,

"(ii) not later than January 1, 1990, shall include visits to a sample of the homes of individuals furnished items and services by the agency (but only with the consent of such individuals) for the purpose of evaluating (in accordance with a standardized reproducible assessment approved by the Secretary under subsection (d)) the extent to which the quality and scope of services furnished improved or maintained the functional capacity of such individuals,

"(iii) shall evaluate—

"(I) the quality of care and services furnished by the agency, and

"(II) the agency's observance of rights specified in or pursuant to section 1861(o),

"(iv) shall be based upon a protocol that is developed, tested, and validated by the Secretary not later than July 1, 1989, and

"(v) shall be conducted by an individual—

"(I) who meets minimum qualifications established by the Secretary not later than July 1, 1989, and

"(II) who has not, during the two-year period prior to the survey, served as a consultant to a home health agency with respect to such agency's compliance with any condition of participation specified in or pursuant to section 1861(o).

"(D) Each home health agency that is found, under a standard survey, to have performed poorly with regard to measures of compliance with any condition of participation specified in or pursuant to section 1861(o) shall be subject to an extended survey. Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey.".

"(d)(1) Not later than April 1, 1990, the Secretary shall designate an instrument (or instruments) for use by an agency conducting surveys pursuant to subsection (c).

"(2)(A) Not later than January 1, 1992, the Secretary shall—

"(i) evaluate the assessment process,

"(ii) report to Congress on the results of such evaluation, and

"(iii) based on such evaluation, make such modifications in the assessment process as the Secretary determines are appropriate.

"(B) The Secretary shall periodically update the evaluation conducted under subparagraph (A), report the results of such update to Congress, and, based on such update, make such modifications in the assessment process as the Secretary determines are appropriate.

"(3) The Secretary shall provide for the training of State and Federal surveyors in the use of any assessment instrument designated under paragraph (1).".

(B) The amendment made by subparagraph (A) shall become effective on the first day of the eighteenth calendar month to begin after the date of enactment of this Act.

(3) Section 1892 (as added by paragraph (1) and amended by paragraph (2)) is further amended by adding at the end thereof the following new subsections:

"(e) The Secretary shall develop and implement criteria and procedures for the evaluation of plans of correction submitted by home health agencies that are found not to meet the conditions of participation and requirements specified in or pursuant to section 1861(o). Such criteria and procedures shall be designed to—

"(1) maximize specificity in the plans submitted, and

"(2) assure that corrections are made by an agency in accordance with a timetable approved by the Secretary.

"(f) If the Secretary determines that—

"(1) a home health agency that is certified for participation under this title—

"(A) no longer substantially meets the conditions of participation specified in or pursuant to section 1861(o), or

"(B) has failed to correct a deficiency in accordance with a timetable approved by the Secretary pursuant to subsection (e)(2), and

"(2) the deficiencies involved do not immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services,

the Secretary may (for a period not to exceed one year) impose intermediate sanctions developed pursuant to subsection (g), in lieu of canceling immediately the certification of the agency.

"(g)(1) The Secretary shall develop and implement—

"(A) a range of intermediate sanctions to apply to home health agencies under the conditions described in subsection (f), and

"(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

"(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

"(i) civil fines and penalties, and

"(ii) suspension of all or part of the payments to which a home health agency would otherwise be entitled under this title with respect to items and services furnished by a home health agency on or after the date in which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (f).

"(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law.

"(3) The Secretary shall develop and implement specific procedures with respect to when and how each of the intermediate sanctions developed under paragraph (1) is to be applied, the amounts of any fines, and the severity of each of these penalties. Such procedures shall be designed so as to minimize the time between identification of violations and imposition of these sanctions and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.".

(B) The amendment made by subparagraph (A) shall become effective on the first day of the eighteenth calendar month to begin after the date of enactment of this Act.

(d) DENIALS AND RECONSIDERATIONS.—

(1) Section 1816 of the Social Security Act (42 U.S.C. 1395h) is amended by adding at the end thereof the following new subsection:

"(j) An agreement with an agency or organization under this section shall require that, with respect to a claim for home health services, extended care services, or post-hospital extended care services submitted by a provider to such agency or organization that is denied, such agency or organization—

"(1) furnish the provider and the individual with respect to whom the claim is made with a written explanation of the denial and of the statutory or regulatory basis for the denial;

"(2) with respect to any claim that is denied on the ground that the service is not medically necessary, ensure that if such individual (or the provider on behalf of the individual) seeks reconsideration of the denial, the denial is reviewed by a physician (if available, a physician with expertise in geriatrics); and

"(3) promptly notify such individual and the provider of disposition of such reconsideration.".

(2)(A) Section 1816(f) of such Act (42 U.S.C. 1395h(f)) is amended by adding at the end thereof the following: "Such standards and criteria shall include with respect to home health, extended care, and post-hospital extended care claims whether such agency or organization is able to process 75 percent of reconsiderations within 60 days (except in the case of the fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days and the extent to which its determinations are reversed on appeal.".

(2) Section 1842(b) of such Act (42 U.S.C. 1395u(b)) is amended by adding at the end thereof the following: "Such standards and criteria shall include with respect to durable medical equipment whether such carrier is able to process 75 percent of reconsiderations within 60 days (except in the case of the fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days and the extent to which its determinations are reversed on appeal.".

(3)(A) The amendment made by paragraph (1) shall apply with respect to claims received on or after January 1, 1988.

(B) The amendments made by paragraph (2) shall apply with respect to claims filed on or after October 1, 1988.

(2) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 and contracts under section 1842 of the Social Security Act, and regulations, to such extent as may be necessary to implement the amendments made by paragraphs (1) and (2) on a timely basis.

(e) MORATORIUM ON PRIOR AUTHORIZATION FOR HOME HEALTH AND POST-HOSPITAL EXTENDED CARE SERVICES.—The Secretary of Health and Human Services shall not implement any voluntary or mandatory program of prior authorization for home health services, extended care services, or post-hospital extended care services under part A or B of title XVIII of the Social Security Act at any time prior to six months after the date on which the Congress receives the report re-

quired under section 9305(k)(4) of the Omnibus Budget Reconciliation Act of 1986.

(f) FISCAL INTERMEDIARY CONSULTATION REQUIREMENT.—

(1) Section 1816 of such Act, as amended by subsection (d), is further amended by adding at the end thereof the following new subsection:

"(k) An agreement with an agency or organization under this section shall require that the agency or organization implement a mechanism for consulting (at least once annually) with representatives of home health and post-hospital extended care and extended care service providers in the region, beneficiaries of services furnished by such providers, and appropriate personnel in the Health Care Financing Administration with respect to problems of claim review, coverage guidelines, reconsiderations, payments, and other activities of the agency or organization.".

(2)(A) The amendment made by paragraph (1) shall become effective on January 1, 1988.

(B) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act, and regulations, to such extent as may be necessary to implement the amendments made by paragraph (1) on a timely basis.

(g) DELAY IN PUBLISHING REGULATIONS WITH RESPECT TO DEEMING THE STATUS OF HOME HEALTH AGENCIES.—The Secretary of Health and Human Services shall not publish final regulations providing that for the purposes of title XVIII of the Social Security Act, an entity may be deemed to be a home health agency on the ground that it has been certified by a private accreditation entity, on a date earlier than 6 months after the date on which proposed regulations are published with respect to the deeming of such agencies.

(h) HOME HEALTH PROSPECTIVE PAYMENT STUDY AND DEMONSTRATION.—

(1) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall conduct a study of and demonstration to test alternative methods of paying home health agencies on a prospective basis for services furnished under title XVIII of the Social Security Act. The study and demonstration shall be designed to enable the Secretary to evaluate the effects of various methods of prospective payment (including payments on a per-visit, per-case, and per-episode basis) on program expenditures, access to and quality of, home health care and operations of home health agencies, and shall provide all necessary data for determining a prospective rate or rates for any such method and for determining whether application of a particular method allows for payment under such title on a budget-neutral basis.

(2) The study under paragraph (1) shall account for—

(A) the special needs of sole community home health agencies and new home health agencies;

(B) extraordinary circumstances beyond the control of home health agencies (such as significant fluctuations in population and unusual labor costs);

(C) the need to minimize administrative and financial reporting requirements to reduce program costs;

(D) variations in severity of illness and case complexity that cannot be adequately accounted for by the various methods considered under subsection (a); and

(E) increases in wages and the cost of goods and services included in the cost of providing home health services.

(3) The amount paid for home health services under the demonstration conducted under this subsection shall be no greater than the amount (as determined by the Secretary) that would have been paid for such services under title XVIII of the Social Security Act in the absence of the demonstration.

(4)(A) Not later than 12 months after the date of enactment of this Act, the Secretary shall submit to the Congress an interim report on the progress of the demonstration under paragraph (1).

(B) Not later than July 1, 1990, the Secretary shall submit to the Congress specific legislative proposals based on the results of the study under paragraph (1).

(i) STUDY OF ADJUSTMENTS TO HOME HEALTH AGENCY COST LIMITS.—The Secretary of Health and Human Services shall study and report to the Congress, not later than June 1, 1988, on—

(1) whether the separate schedules of cost limits currently applied to home health agencies under title XVIII of the Social Security Act located in urban and rural areas accurately reflect differences in the costs of urban and rural home health agencies, and

(2) the appropriateness of modifying such limits to take into account the proportion of agency patients who are from urban and rural areas.

(j) BENEFICIARY NOTIFICATION.—

(1) Not later than 90 days after the date of enactment of this Act, the Secretary of Health and Human Services (in this section referred to as "the Secretary") shall develop and distribute to each provider with an agreement under section 1866 of the Social Security Act and to each agency or organization with an agreement under section 1816 of such Act a standard form that is periodically updated (as appropriate) and contains a description of—

(A) rights and conditions of coverage with respect to home health services, post-hospital extended care services, and extended care services furnished under title XVIII of such Act;

(B) rights to appeal a coverage determination under such title where the provider of such services decides not to submit a claim on behalf of the beneficiary;

(C) the right to appeal (directly or through the provider) the denial of a claim by an agency or organization pursuant to section 1816 of such Act; and

(D) the practical steps required for initiating appeals described in subparagraphs (B) and (C) (including sources of legal assistance).

(2) The Secretary shall take appropriate steps to ensure that—

(A) each provider with an agreement under section 1866 of the Social Security Act makes the standard document (as updated) distributed under paragraph (1) available to any individual covered under the insurance program under part A of title XVIII of such Act at any time such individual requests home health services, post-hospital extended care services, or extended care services through the provider; and

(B) each agency or organization with an agreement under section 1816 of such Act makes such document available to any such individual at any time the agency or organization makes a determination regarding home health services, post-hospital extended care services, or extended care services furnished such individual with respect to which the individual may appeal.

SEC. 4082. OFFICE OF RURAL HEALTH POLICY.

Title VII of the Social Security Act is amended by adding at the end thereof the following new section:

"OFFICE OF RURAL HEALTH POLICY

"SEC. 711. (a) There shall be established in the Department of Health and Human Services (in this section referred to as the "Department") an Office of Rural Health Policy (in this section referred to as the 'Office'). The Office shall be headed by a Director, who shall advise the Secretary on the effects of current policies and proposed statutory, regulatory, administrative, and budgetary changes in the programs established under titles XVIII and XIX on the financial viability of small rural hospitals, the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, and access to (and the quality of) health care in rural areas.

"(b) In addition to advising the Secretary with respect to the matters specified in subsection (a), the Director, through the Office, shall—

"(1) oversee compliance with the requirements of section 1102(b) of this Act and section 4083 of the Omnibus Budget Reconciliation Act of 1987,

"(2) establish and maintain a clearinghouse for collecting and disseminating information on—

"(A) rural health care issues,

"(B) research findings relating to rural health care, and

"(C) innovative approaches to the delivery of health care in rural areas,

"(3) coordinate the activities within the Department that relate to rural health care, and

"(4) provide information to the Secretary and others in the Department with respect to the activities, of other Federal departments and agencies, that relate to rural health care.".

SEC. 4083. SET ASIDE FOR EXPERIMENTS AND DEMONSTRATION PROJECTS RELATING TO RURAL HEALTH CARE ISSUES.

(a) SET ASIDE.—Not less than ten percent of the total amounts expended in each fiscal year by the Secretary of Health and Human Services (in this section referred to as the "Secretary") after October 1, 1988, with respect to experiments and demonstration projects authorized by section 402 of the Social Security Amendments of 1967 and the experiments and demonstration projects authorized by the Social Security Amendments of 1972 shall be expended for experiments and demonstration projects relating exclusively or substantially to rural health issues, including (but not limited to) the impact of the payment methodology under section 1886(d) of the Social Security Act on the financial viability of small rural hospitals, the effect of medicare payment policies on the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, the appropriateness of medicare conditions of participation and staffing requirements for small rural hospitals, and the impact of medicare policies on access to (and the quality of) health care in rural areas.

(b) AGENDA.—The Secretary of Health and Human Services shall establish an agenda of experiments and demonstration projects, relating exclusively or substantially to rural health issues, that are in progress or have been proposed, and shall include such agenda in the annual report submitted pursuant to section 1875(b) of the Social Secu-

rity Act. The agenda shall be accompanied by a statement setting forth the amounts that have been obligated and expended with respect to such experiments and projects in the current and most recently completed fiscal years.

SEC. 4084. TECHNICAL AMENDMENTS RELATED TO CERTIFIED REGISTERED NURSE ANESTHETISTS.

(a) IN GENERAL.—Section 1833(l) of the Social Security Act (42 U.S.C. 1395l(l)), as added by section 9320(e) of the Omnibus Budget Reconciliation Act of 1986, is amended—

(1) in paragraph (2), by striking "1985" and inserting in lieu thereof "1985 and such other data as the Secretary determines necessary"; and

(2) in paragraph (5)(A), by striking "or group practice" each place it appears and inserting in lieu thereof "group practice, or ambulatory surgical center".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply as if included in the amendment made by section 9320(e)(2) of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4085. DEMONSTRATION PROJECTS TO PROVIDE PAYMENT ON A PREPAID, CAPITATED BASIS FOR COMMUNITY NURSING AND AMBULATORY CARE FURNISHED TO MEDICARE BENEFICIARIES.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with not less than four eligible organizations submitting applications under this section to conduct demonstration projects to provide payment on a prepaid, capitated basis for community nursing and ambulatory care furnished to any individual entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act (other than an individual medically determined to have end-stage renal disease) who resides in the geographic area served by the organization and enrolls with such organization (in accordance with subsection (c)(2)).

(b) DEFINITIONS OF COMMUNITY NURSING AND AMBULATORY CARE AND ELIGIBLE ORGANIZATION.—As used in this section:

(1) The term 'community nursing and ambulatory care' means the following services:

(A) Part-time or intermittent nursing care furnished by or under the supervision of registered professional nurses.

(B) Physical, occupational, or speech therapy.

(C) Social and related services supportive of a plan of ambulatory care.

(D) Part-time or intermittent services of a home health aide.

(E) Medical supplies (other than drugs and biologicals) and durable medical equipment while under a plan of care.

(F) Medical and other health services described in paragraphs (2)(H)(ii) and (5) through (9) of section 1861(s) of the Social Security Act.

(G) Rural health clinic services described in section 1861(aa)(1)(C) of such Act.

(H) Certain other related services listed in section 1915(c)(4)(B) of such Act to the extent the Secretary finds such services are appropriate to prevent the need for institutionalization of a patient.

(2) The term 'eligible organization' means a public or private entity, organized under the laws of any State, which meets the following requirements:

(A) The entity (or a division or part of such entity) is primarily engaged in the direct provision of community nursing and ambulatory care.

(B) The entity provides directly, or through arrangements with other qualified personnel, the services described in paragraph (1).

(C) The entity provides that all nursing care (including services of home health aids) is furnished by or under the supervision of a registered nurse.

(D) The entity provides that all services are furnished by qualified staff and are coordinated by a registered professional nurse.

(E) The entity has policies governing the furnishing of community nursing and ambulatory care that are developed by registered professional nurses in cooperation with (as appropriate) other professionals.

(F) The entity maintains clinical records on all patients.

(G) The entity has protocols and procedures to assure, when appropriate, timely referral to or consultation with other health care providers or professionals.

(H) The entity complies with applicable State and local laws governing the provision of community nursing and ambulatory care to patients.

(I) The site where the entity provides directly, or through other qualified personnel, nursing and ambulatory care is located in an area designated by the Secretary as a health manpower shortage area.

(J) The requirements of subparagraphs (B), (D), and (E) of section 1876(b)(2) of the Social Security Act.

(c) AGREEMENTS WITH ELIGIBLE ORGANIZATIONS TO CONDUCT DEMONSTRATION PROJECTS.—

(1) The Secretary may not enter into an agreement with an eligible organization to conduct a demonstration project under this section unless the organization meets the requirements of this subsection and subsection (d) with respect to members enrolled with the organization under this section.

(2) The organization shall have an open enrollment period for the enrollment of individuals under this section. The duration of such period of enrollment and any other requirement pertaining to enrollment or termination of enrollment shall be specified in the agreement with the organization.

(3) The organization must provide to members enrolled with the organization under this section, through providers and other persons that meet the applicable requirements of titles XVIII and XIX of the Social Security Act, community nursing and ambulatory care (as defined in subsection (b)(1)) which is generally available to individuals residing in the geographic area served by the organization, except that the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered.

(4) The organization must make community nursing and ambulatory care (and such other health care services as such individuals have contracted for) available and accessible to each individual enrolled with the organization under this section, within the area served by the organization, with reasonable promptness and in a manner which assures continuity.

(5) Section 1876(c)(5) of the Social Security Act shall apply to organizations under this section in the same manner as it applies to organizations under section 1876 of such Act.

(6) The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals under the demonstration project conducted under this section, which program (A) stresses health outcomes and (B) provides review by health care professionals of the process followed in the provision of such health care services.

(d) DETERMINATION OF PER CAPITA PAYMENT RATES.—

(1) The Secretary shall determine for each 12-month period in which a demonstration project is conducted under this section, and shall announce (in a manner intended to provide notice to interested parties) not later than three months before the beginning of such period, with respect to each eligible organization conducting a demonstration project under this section, a per capita rate of payment for each class of individuals who are enrolled with such organization who are entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act.

(2)(A) Except as provided in paragraph (3), the per capita rate of payment under paragraph (1) shall be determined in accordance with this paragraph.

(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

(C) The per capita rate of payment under paragraph (1) for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in subparagraph (D)) for that class.

(D) For purposes of subparagraph (C), the term "adjusted average per capita cost" means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for those services covered under parts A and B of title XVIII of the Social Security Act and types of expenses otherwise reimbursable under such parts A and B which are described in subparagraphs (A) through (G) of subsection (b)(1) (including administrative costs incurred by organizations described in sections 1816 and 1842 of such Act), if the services were to be furnished by other than an eligible organization.

(3) The Secretary shall, in consultation with providers, health policy experts, and consumer groups develop capitation-based reimbursement rates for such classes of individuals entitled to benefits under part A and enrolled under part B of the Social Security Act as the Secretary shall determine. Such rates shall be applied in determining per capita rates of payment under paragraph (1) with respect to at least one eligible organization conducting a demonstration project under this section.

(4)(A) In the case of an eligible organization conducting a demonstration project under this section, the Secretary shall make monthly payments in advance and in accordance with the rate determined under paragraph (2) or (3), except as provided in subsection (e)(3)(B), to the organization for each individual enrolled with the organization.

(B) The amount of payment under paragraph (2) or (3) may be retroactively adjust-

ed to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

(5) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A and enrolled under part B of the Social Security Act shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established under such Act in such proportions from each such trust fund as the Secretary deems to be fair and equitable taking into consideration benefits attributable to such parts A and B, respectively.

(6) During any period in which an individual is enrolled with an eligible organization conducting a demonstration project under this section, only the eligible organization (and no other individual or person) shall be entitled to receive payments from the Secretary under this title for community nursing and ambulatory care (as defined in subsection (b)(1)) furnished to the individual.

(e) RESTRICTION ON PREMIUMS, DEDUCTIBLES, COPAYMENTS, AND COINSURANCE.—

(1) In no case may the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to community nursing and ambulatory care) to individuals who are enrolled under this section with the organization, exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A and enrolled under part B of the Social Security Act, if they were not members of an eligible organization.

(2) If the eligible organization provides to its members enrolled under this section services in addition to community nursing and ambulatory care, election of coverage for such additional services shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this section, and

(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such services to such members

exceed the adjusted community rate for such services (as defined in section 1876(e)(3) of the Social Security Act).

(3)(A) Subject to subparagraphs (B) and (C), each agreement to conduct a demonstration project under this section shall provide that if—

(i) the adjusted community rate, referred to in paragraph (2), for community nursing and ambulatory care covered under parts A and B of title XVIII of the Social Security Act (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization,

is less than

(ii) the average of the per capita rates of payment to be made under subsection (d)(1) at the beginning of the 12-month period (as determined on such basis as the Secretary determines appropriate) described in such subsection for members enrolled under this section with the organization,

the eligible organization shall provide to such members the additional benefits described in section 1876(g)(3) of the Social Security Act which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced).

(B) Subparagraph (A) shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced).

(C) An organization conducting a demonstration project under this section may provide (with the approval of the Secretary) that a part of the value of such additional benefits under subparagraph (A) be withheld and reserved by the Secretary as provided in section 1876(g)(5) of the Social Security Act.

(4) The provisions of paragraphs (3), (5), and (6) of section 1876(g) of the Social Security Act shall apply in the same manner to agreements under this section as they apply to risk-sharing contracts under section 1876 of such Act, and, for this purpose, any reference in such paragraphs to paragraph (2) is deemed a reference to paragraph (3) of this subsection.

(5) Section 1876(e)(4) of the Social Security Act shall apply to eligible organizations under this section in the same manner as it applies to eligible organizations under section 1876 of such Act.

(f) COMMENCEMENT AND DURATION OF PROJECTS.—Each demonstration project under this section shall begin not later than July 1, 1989, and shall be conducted for a period of three years.

(g) REPORT.—Not later than January 1, 1992, the Secretary shall submit to the Congress a report on the results of the demonstration projects conducted under this section.

SEC. 4086. WAIVER OF INPATIENT LIMITATIONS FOR THE CONNECTICUT HOSPICE.

Section 9307(a) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "1988" and inserting in lieu thereof "1990".

SEC. 4087. TECHNICAL CORRECTION RELATING TO CERTIFICATION OF PODIATRIC TEACHING PROGRAMS.

Section 1861(b)(6) of the Social Security Act (42 U.S.C. 1395x(b)(6)) is amended by striking "Council on Podiatry Education of the American Podiatry Association" and inserting in lieu thereof "Council of Podiatric Medical Education of the American Podiatric Medical Association".

SEC. 4088. PROVISION OF OFFSITE COMPREHENSIVE OUTPATIENT REHABILITATION SERVICES.

Section 1861(cc)(1) of the Social Security Act (42 U.S.C. 1395x(cc)(1)) is amended by adding at the end thereof the following: "In the case of physical therapy, occupational therapy, and speech pathology services, there shall be no requirement that the item or service be furnished at any single fixed location if the item or service is furnished pursuant to such plan and payments are not otherwise made for the item or service under this title.".

SEC. 4089. MEDICARE HEARINGS AND APPEALS.

(a) MAINTAINING CURRENT SYSTEM FOR HEARINGS AND APPEALS.—Any hearing conducted under section 1869(b)(1) of the Social Security Act prior to the date on which the Secretary of Health and Human Services submits the report required under subsection (b)(1) shall be conducted by Administrative Law Judges of the Office of Hearings and Appeals of the Social Security Administration in the same manner as are hearings conducted under section 205(b)(1) of such Act.

(b) STUDY AND REPORT ON USE OF TELEPHONE HEARINGS.—

(1) The Secretary of Health and Human Services, together with the Comptroller General of the United States, shall conduct a study on holding hearings under section 1869(b)(1) of the Social Security Act by telephone and shall report the results of the study not later than 6 months after the date of enactment of this Act.

(2) The study under paragraph (1) shall focus on whether telephone hearings allow for a full and fair evidentiary hearing, in general, or with respect to any particular category of claims and shall examine the possible improvements to the hearing process (such as cost-effectiveness, convenience to the claimant, and reduction in time under the process) resulting from the use of such hearings as compared to the adoption of other changes to the process (such as expansions in staff and resources).

SEC. 4090. MORATORIUM ON LABORATORY PAYMENT DEMONSTRATION.

Prior to January 1, 1990, the Secretary of Health and Human Services shall not conduct any demonstration projects relating to competitive bidding as a method of purchasing laboratory services under title XVIII of the Social Security Act. The Secretary may contract for the design of, and site selection for, such demonstration projects.

SEC. 4091. PERMITTING DISABLED INDIVIDUALS TO RENEW ENTITLEMENT TO MEDICARE AFTER GAINFUL EMPLOYMENT WITHOUT A 2-YEAR WAITING PERIOD.

(a) IN GENERAL.—Section 226(f) of the Social Security Act (42 U.S.C. 426(f)) is amended by inserting before the period at the end the following: ", unless the physical or mental impairment which is the basis for disability is the same as (or directly related to) the physical or mental impairment which served as the basis for disability in such previous period".

(b) EFFECTIVE DATE.—

(1) The amendment made by subsection (a) shall apply to months beginning after the end of the 60-day period beginning on the date of enactment of this Act.

(2) The amendment made by subsection (a) shall not apply so as to include (for the purposes described in section 226(f) of the Social Security Act) monthly benefits paid for any month in a previous period (described in that section) that terminated before the end of the 60-day period described in paragraph (1).

SEC. 4092. HEALTH MAINTENANCE ORGANIZATION REFORMS.

(a) CIVIL MONEY PENALTIES AND INTERMEDIATE SANCTIONS AGAINST HMOs/CMPs.—Section 1876(i)(6) of the Social Security Act (42 U.S.C. 1395mm) is amended to read as follows:

"(6)(A) If the Secretary determines that an eligible organization with a contract under this section—

"(i) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

"(ii) imposes premiums on individuals enrolled under this section in excess of the premiums permitted;

"(iii) acts to expel or to refuse to re-enroll an individual in violation of the provisions of this section;

"(iv) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this section) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;

"(v) misrepresents or falsifies information that is furnished—

"(I) to the Secretary under this section, or

"(II) to an individual or to any other entity under this section; or

"(vi) fails to comply with the requirements of subsection (g)(6)(A);

the Secretary may provide for any of the remedies described in subparagraph (B).

"(B) The remedies described in this subparagraph are—

"(i) civil money penalties of not more than $25,000 for each such failure under clause (i) of subparagraph (A) or, with respect to any other determination under such subparagraph, of not more than $10,000 for each such determination,

"(ii) suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur, or

"(iii) suspension of payment to the organization under this section for individuals enrolled after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.

The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as they apply to a civil money penalty under that section.".

(b) TEMPORARY WAIVER FOR WATTS HEALTH FOUNDATION.—Section 9312(c)(3) of the Omnibus Budget Reconciliation Act of 1986 is amended by adding at the end thereof the following new subparagraph:

"(D) TREATMENT OF CERTAIN WAIVERS.—In the case of an eligible organization (or successor organization) that is described in clauses (i) and (ii) of subparagraph (C) and that received a grant or grants totaling at least $3,000,000 in fiscal year 1987 under section 329(d)(1)(A) or 330(d)(1) of the Public Health Service Act—

"(i) before January 1, 1990, section 1876(f) of the Social Security Act shall not apply to the organization;

"(ii) beginning on January 1, 1990, the Secretary of Health and Human Services shall waive the requirement of such section with respect to the organization if—

"(I) before such date, the organization has submitted to the Secretary a schedule for the organization to comply with the requirement of section 1876(f)(1) of such Act, and the Secretary has found such schedule to be reasonable and has approved such schedule; and

"(II) periodically after such date, the Secretary reviews the organization's compliance with such schedule and determines that the organization has complied, or made significant progress towards compliance, with such schedule; and

"(iii) after January 1, 1990, if the Secretary has approved a schedule under clause (ii)(I) and has determined, in a periodic review under clause (ii)(II), that the organization has not complied, or made significant progress towards compliance, with such schedule, the Secretary may provide for a sanction described in section 1876(f)(3) of the Social Security Act effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization of such noncompliance.".

(c) EXTENSION OF WAIVERS FOR SOCIAL HEALTH MAINTENANCE ORGANIZATIONS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall extend without interruption, through September 30, 1992, the approval of waivers granted under subsection (a) of section 2355 of the Deficit Reduction Act of 1984 for the demonstration project described in subsection (b) of that section, subject to the terms and conditions (other than duration of the project) established under that section (as amended by subsection (b)).

(2) EXTENSION OF RISK.—Section 2355(b)(5) of the Deficit Reduction Act of 1984 is amended by inserting "and in succeeding years" after "third year".

(3) INTERIM REPORT.—Section 2355(d)(2) of the Deficit Reduction Act of 1984 is amended by striking "final" and inserting "interim".

(4) FINAL REPORT.—The Secretary shall submit a final report to the Congress on the project referred to in paragraph (1) not later than March 31, 1993.

(d) PAYMENT METHODOLOGY REFORM DEMONSTRATIONS.—

(1) The Secretary of Health and Human Services (in this section referred to as the "Secretary") is specifically authorized to conduct demonstrations under this subsection for the purpose of testing alternative payment methodologies pertaining to capitation payments under title XVIII of the Social Security Act.

(2)(A) Demonstrations shall be conducted under this subsection in each of the following three areas:

(i) Computing adjustments to the average per capita cost under section 1876 of the Social Security Act on the basis of health status.

(ii) Contracting with employer-related groups to provide medicare coverage under which payment is based on the experience of the employer-related group, benefits are offered to employees in a managed care setting, and participation is voluntary.

(iii) Accounting for geographic variations in cost in the adjusted average per capita costs applicable to an eligible organization under section 1876 of the Social Security Act.

(3)(A) In carrying out demonstrations under clause (ii), the Secretary shall appoint (in consultation with the Congress) a panel of specialists to review the project and advise on both rate-setting and the adoption of appropriate measures to ensure high quality of care.

(B)(i) Each demonstration conducted under clause (iii) shall consider geographic bases which may provide more equitable and appropriate payment than is currently provided on a county-by-county basis.

(ii) Demonstrations under clause (iii) shall primarily serve geographic areas in which payment rates under section 1876 of the Social Security Act are below 80 percent of the median of the adjusted average per capita cost for all counties within metropolitan statistical areas (and may include eligible organizations under section 1876 of such Act located in urban areas that primarily serve populations from counties in which payment rates are below such percentage).

(iii) Five million dollars in each of fiscal years 1989 and 1990 is authorized for demonstrations under clause (iii).

(4) The provisions of subsection (a)(2) and the first sentence of subsection (b) of section 402 of the Social Security Amendments of 1967 shall apply to the demonstration project under paragraph (1) of this section as they apply to experiments under subsection (a)(1) of that section.

(e) HMO PAYMENTS FOR HOSPITAL SERVICES.—

(1) Section 1876(g)(4) of the Social Security Act (42 U.S.C. 1395mm(g)(4)) is repealed.

(2) Section 1866(a)(1) of such Act is amended by adding at the end thereof the following new subparagraph:

"(O) in the case of hospitals and skilled nursing facilities to accept as payment in full for inpatient hospital and extended care services that are covered under this title and are furnished to any individual enrolled under section 1876 with an eligible organization that has as of October 1, 1987, exercized the option under section 1876(g)(4) of the Social Security Act as in effect prior to the date of enactment of this section, the amounts (in the case of hospitals) or limits (in the case of skilled nursing facilities) that would be made as a payment in full under this title if the individuals were not so enrolled.".

(3) PROVISIONS OF DRG RATES.—The Secretary of Health and Human Services shall provide (in machine readable form) to eligible organizations described in paragraph (2) Medicare DRG Rates for payments required by the amendment made by subsection (b) and data on cost pass-through items for all inpatient services provided to medicare beneficiaries enrolled with eligible organizations under section 1876 of the Social Security Act.

(4) EFFECTIVE DATE.—The amendment made by paragraphs (1) and (2) shall apply to admissions on or after April 1, 1988, or earlier if the Secretary can provide the information required under paragraph (3) in machine readable form.

(f) DISCOUNT AND ADVANCE DETERMINATION OF PAYMENTS.—Section 1876(a)(1)(C) is amended by adding at the end the following: "In the case of a contract for a term of more than one year, the Secretary, at the request of the eligible organization, may determine the annual rates for each year of the contract in advance of entering into such contract, and may discount those annual rates as the Secretary determines appropriate in advance of entering into such a contract.".

(g) POST-CONTRACT PROTECTION FOR ENROLLEES WITH ELIGIBLE ORGANIZATIONS UNDER THE MEDICARE PROGRAM; PRIORITY UNDER THE BANKRUPTCY CODE.—

(1) Section 1876(b)(2) of such Act (42 U.S.C. 1395mm(b)(2)) is amended by adding at the end thereof the following new subparagraph:

"(F) The entity makes assurances (satisfactory to the Secretary) that in the event the entity ceases to provide items and services pursuant to a contract under this section, the entity will provide or arrange for supplemental coverage of benefits under this title, during any exclusion period related to a pre-existing condition, to all individuals enrolled with the entity who receive benefits under this title.".

(2)(A) Subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end thereof the following new section:

"§ 1114. Special payment rule for health maintenance organizations.

"(a) Notwithstanding any other provision of this title, in the case of a debtor in possession that has made the assurances required under section 1876(b)(2)(F) of the Social Security Act, the debtor in possession, or the trustee if one has been appointed under the provisions of this chapter, shall timely make payments for supplemental coverage of benefits under title XVIII of the Social Security Act (to the extent such payments are necessary to meet the requirement for which assurances are made under such section).

"(b) Any payment under subsection (a) required to be made before a plan confirmed under section 1129 of this title is effective has the status of an allowed administrative expense as provided in section 503 of this title.".

(B) Section 1129 of title 11, United States Code, is amended by adding at the end of subsection (a) thereof the following:

"(12) In the case of an entity that has made the assurances required under section 1876(b)(2)(F) of the Social Security Act, the plan provides for the continuation after its effective date of payment for supplemental coverage of benefits under title XVIII of the Social Security Act, at any time prior to confirmation of the plan, to the extent any such payment is necessary to meet the requirement for which assurances are made under such section.".

(C) The table of sections for subchapter I of chapter 11, title 11, United States Code, is amended by adding at the end thereof the following new item:

"1114. Special payment rule for health maintenance organizations.".

(D) The amendments made by this paragraph shall become effective on the date of enactment of this Act and shall be effective with respect to cases commenced under chapter 11 of title 11, United States Code, in which a plan for reorganization was not confirmed by the court as of the date of enactment of this Act.

(h) TASK FORCE ON MEDICARE CAPITATION.—

(1) There is hereby established a Task Force to be known as the Task Force on Medicare Capitation (in this subsection referred to as the "Task Force") to be composed of 15 members appointed in accordance with paragraph (2)(A).

(2)(A)(i) Members of the Task Force shall be appointed by the Prospective Payment Assessment Commission, in consultation with the Physician Payment Review Commission, after consultation with private and prepaid health plan organizations.

(ii) Of the 15 members composing the Task Force—

(I) five members shall be chosen from among representatives of private health plan and prepaid health plan organizations (which representatives may include physicians and other health professionals who serve Medicare beneficiaries),

(II) five members shall be chosen from among researchers in health care delivery and finance and individuals with an expertise in the financing and underwriting of prepaid health care, and

(III) five members shall be chosen from among Medicare beneficiaries and representatives of employers and labor.

(B) Members of the Task Force shall serve for the life of the Task Force. A vacancy on the Task Force shall be filled in the same manner in which the original appointment was made, shall be consistent with the requirements of subparagraph (A)(ii), and shall not affect the powers or duties of the Task Force.

(C) A majority of the members of the Task Force shall constitute a quorum for the transaction of business. Decisions of the Task Force shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

(D) The first meeting of the Task Force shall be called by the Prospective Payment Assessment Commission and shall be held not later than January 1, 1988. At such meeting, the members of the Task Force shall select a chairman from among such members and shall meet thereafter at the call of the chairman or of a majority of the members (which in no event shall be less than once every three months).

(3)(A) Members of the Task Force shall serve without pay.

(B) Members of the Task Force shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons serving intermittently in the Government service are allowed travel expenses under section 5703 of title 5, United States Code.

(4)(A) It shall be the duty of the Task Force—

(i) to review periodically the calculations and methodology employed by the Secretary in determining the capitation rate with respect to an organization with a risk-sharing contract with the Secretary of Health and Human Services under section 1876 of the Social Security Act,

(ii) to document and report on the discrepancies between the actual and projected United States per capita incurred cost used for purposes of determining such capitation rate (and, in particular, to identify such discrepancies with respect to calendar years 1985, 1986, and 1987), and

(iii) to assess alternative methodologies for determining such capitation rate.

(B) Not later than January 1 of 1989 and 1990, the Secretary shall submit interim reports to the Congress describing the activities of the Task Force during the preceding year and containing such assessment, analysis, evaluation, and recommendations (as described in subparagraph (C)(i)) as can reasonably be formulated at the time such reports are prepared and submitted.

(C)(i) Not later than January 1, 1989, the Task Force shall submit a report to the Congress that contains—

(I) an assessment of the extent to which the long-term cost of providing benefits under title XVIII of the Social Security Act would be reduced by providing such benefits through prepaid health plans;

(II) an analysis of the use, cost, and quality of benefits provided under prepaid plans as compared to fee-for-service systems;

(III) an evaluation of—

(aa) the use of various geographic areas in calculating the capitation rate applicable to an organization with a risk-sharing contract with the Secretary of Health and Human Services under section 1876 of the Social Security Act,

(bb) the use of fee-for-service reimbursement and utilization rates in calculating such rate, and

(cc) the effects on such rate of substantial market area penetration by capitated health plans; and

(III) recommendations for revising the method for calculating the capitation rate applicable to an organization with a risk-sharing contract with the Secretary of Health and Human Services under section 1876 of the Social Security Act that specifically address the need for—

(aa) adjusting the rate to account for the case mix (including such factors as age, disability, and functional status) of individuals entitled to benefits under title XVIII of the Social Security Act who are enrolled with the organization, geographic differences in the cost of furnishing services, and the effect of outlier cases,

(bb) controlling and reimbursing for catastrophic illness by using alternative methodologies to calculate the rate,

(cc) developing methods for ensuring that individuals residing in rural or medically underserved areas have access to quality health care (as provided through such organizations), and

(dd) setting a more equitable rate with respect to contracting organizations that serve rural or medically underserved areas (or any geographic area in which the medical practice is more conservative).

(ii)(I) The report submitted to the Congress under clause (i) shall be prepared in consultation with the Health Care Financing Administration and shall be based, in part, upon the findings of various research projects that are conducted by the Task Force or by such Administration.

(II) Prior to submitting the report to the Congress under clause (i), the Task Force shall make the report available to representatives of private and prepaid health plan organizations and shall provide to such representatives an opportunity for commenting upon the report. The comments of such representatives shall accompany the report when submitted to the Congress.

(5)(A)(i) Subject to clause (ii), the Task Force may award grants or contracts to individuals or entities to conduct research that the Task Force determines would be of assistance in the performance of any of the duties of the Task Force (as described in paragraph (4)).

(ii) No contract or grant may be awarded under clause (i) unless the Task Force demonstrates to the satisfaction of the Prospective Payment Assessment Commission and the Physician Payment Review Commission that information otherwise available to the Task Force is inadequate to allow the Task Force to perform such duties.

(B)(i) The Task Force may appoint and fix the pay of such staff personnel as it deems desirable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates (which personnel shall be allowed travel expenses, including a per diem in lieu of subsistence, in the same manner as persons serving intermittently in the Government service are allowed travel expenses under section 5703 of title 5, United States Code).

(ii) The Task Force may use on a reimbursable basis, with the prior consent of the commission concerned, the services of the personnel of the Prospective Payment Assessment Commission and the Physician Payment Review Commission.

(C) The Task Force may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States Government.

(D) The Task Force may accept, use, and dispose of donations of money and property and may accept such volunteer services of individuals as it deems appropriate.

(E) The Task Force may procure supplies, services, and property, and make contracts.

(F) For purposes of carrying out its duties under paragraph (4), the Task Force may adopt such rules for its organization and procedures as it deems appropriate, including procedures that allow any interested party the opportunity to submit information to the Task Force.

(6)(A) The Task Force shall terminate on January 2, 1991.

(B) Any funds held by the Task Force on the date of termination of the Task Force shall be deposited in the general fund of the Treasury of the United States and credited as miscellaneous receipts. Any property (other than funds) held by the Task Force on such date shall be disposed of as excess or surplus property.

(7) There are authorized to be appropriated for each of the fiscal years 1988 through 1991 such sums as may be necessary to carry out the provisions of this subsection.

(i) DISABLED INDIVIDUAL CLASSIFICATION.—Section 1876(a)(1)(B) of such Act (42 U.S.C. 1395mm(a)(1)(B)) is amended—

(1) by inserting "(i)" after "(B)"; and

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

"(ii) The Secretary shall establish a class of members based on age and disability status that includes individuals who attain the age of 65 during calendar year 1988, 1989, 1990, or 1991, are entitled to benefits under this title, and (prior to attaining such age) received disability insurance benefits under section 223.".

(j) TWO-YEAR EXTENSION ON PERIOD FOR BENEFIT STABILIZATION.—

(1) Section 1876(g)(5) of such Act (42 U.S.C. 1395mm(g)(5)), as added by the amendment made by section 2350(a)(2) of the Deficit Reduction Act of 1984, is amended by striking "four" and inserting in lieu thereof "six".

(2) The amendment made by paragraph (1) shall be effective as if included in the enactment of the amendment made by section 2350(a)(2) of the Deficit Reduction Act of 1984.

(k) TREATMENT OF MICHIGAN BLUE CARE HMO NETWORK UNDER 50 PERCENT RULE.—Blue Care, Inc., a nonprofit corporation which is indirectly owned and operated by Blue Cross and Blue Shield of Michigan, Inc. and which enrolls individuals for the purpose of providing them with health care services through assignment to health maintenance organizations which are indirectly or wholly owned and operated by Blue Cross and Blue Shield of Michigan, Inc., is deemed to meet the requirement of section 1876(f)(1) of the Social Security Act (relating to limitation on enrollment of medicare and medicaid beneficiaries with an eligible organization) if—

(1) such requirement would be met if applied to all individuals enrolled with (or otherwise assigned to) each of such health maintenance organizations, and

(2) not more than 20 percent of the number of individuals who are members of (or otherwise assigned to) each such organization consists of individuals who are entitled to benefits under title XVIII of the Social Security Act.

(l) ASSIGNMENT OF MEMBERS FOR HIP HEALTH MAINTENANCE ORGANIZATION.—

(1) Section 1876(f) of such Act (42 U.S.C. 1395mm(f)) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3)(A) An eligible organization described in subparagraph (B) may elect, for purposes of determining the compliance of a subdivision, subsidiary, or affiliate described in subparagraph (B)(iii) with the requirement of paragraph (1) for the period before October 1, 1992, to have members of the subdivision, subsidiary, or affiliate considered to be members of the parent organization.

"(B) An eligible organization described in this subparagraph is an eligible organization which—

"(i) is described in section 1903(m)(2)(B)(iii);

"(ii) has members who have a collectively bargained contractual right to obtain health benefits from the organization;

"(iii) elects to provide benefits under a risk-sharing contract to individuals residing in a service area through a subdivision, subsidiary, or affiliate which itself is an eligible organization serving the area and which is wholly-owned or wholly-contracted by the parent eligible organization; and

"(iv) has assumed any risk of insolvency and quality assurance with respect to individuals receiving benefits through such a subdivision, subsidiary, or affiliate.".

(2) The amendments made by paragraph (1) shall become effective on the date of enactment of this Act.

(m) NOTIFICATION OF TERMINATION OF RISK-SHARING CONTRACT.—

(1) Section 1876(c)(3) of such Act (42 U.S.C. 1395mm(c)(3)) is amended by adding at the end thereof the following new subparagraph:

"(F)(i) Each eligible organization having a risk-sharing contract under this section shall notify individuals eligible to enroll with the organization under this section and individuals enrolled with the organization under this section that—

"(I) the organization is authorized by law to terminate or refuse to renew the contract, and

"(II) termination or nonrenewal of the contract may result in termination of the enrollments of individuals enrolled with the organization under this section.

"(ii) The notice required by clause (i) shall be included in—

"(I) any materials described in subparagraph (C) that are distributed by an eligible organization to individuals eligible to enroll under this section with the organization, and

"(II) any explanation provided to enrollees by the organization pursuant to subparagraph (E).".

(2) The amendment made by paragraph (1) shall apply to contracts entered into (or renewed) on or after the date of the enactment of this Act.

SEC. 4093. RECOVERY OF PAYMENTS FOR CERTAIN PACEMAKER DEVICES.

Section 1862(h) of the Social Security Act (42 U.S.C. 1395y(h)) is amended—

(1) in paragraph (1)(B), by striking "law," and inserting in lieu thereof "law (and any amount paid to a provider under any such warranty),";

(2) in paragraph (1)(D), by striking "(3)," and inserting in lieu thereof "(3), in determining the amount subject to repayment under paragraph (2)(C),";

(3) in paragraph (2)—

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

(B) by striking the period at the end of subparagraph (B) and inserting in lieu thereof ", and", and

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

"(C) to make repayment to the Secretary of amounts paid under this title to the provider with respect to any cardiac pacemaker device or lead which has been replaced by the manufacturer, or for which the manufacturer has made payment to the provider, under an express or implied warranty."; and

(4) in paragraph (4)(B)—

(A) by striking "or has" and inserting in lieu thereof ", has", and

(B) by striking "(2)(B)," and inserting in lieu thereof "(2)(B), or has failed to make repayment to the Secretary as required under paragraph (2)(C),".

(2) The amendments made by paragraph (1) shall become effective on January 1, 1988.

Subpart II—Medicaid Provisions

SEC. 4101. HOME AND COMMUNITY-BASED SERVICES FOR THE ELDERLY.

(a) WAIVER FORMULA.—

(1) Section 1915 of the Social Security Act (42 U.S.C. 1396n) is amended—

(A) by transferring subsection (d) to the end of such section and redesignating it as subsection (h), and

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

"(d)(1) Subject to paragraph (2), the Secretary shall grant a waiver to provide that a State plan approved under this title shall include as 'medical assistance' under such plan payment for part or all of the cost of home or community-based services (other than room and board) which are provided pursuant to a written plan of care to individuals 65 years of age or older with respect to whom there has been a determination that but for the provision of such services the individuals would be likely to require the level of care provided in a skilled nursing facility or intermediate care facility the cost of which could be reimbursed under the State plan.

"(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

"(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

"(B) with respect to individuals 65 years of age or older who—

"(i) are entitled to medical assistance for skilled nursing or intermediate care facility services under the State plan,

"(ii) may require such services, and

"(iii) may be eligible for such home or community-based services under such waiver,

the State will provide for an evaluation of the need for such skilled nursing facility or intermediate care facility services;

"(C) such individuals who are determined to be likely to require the level of care provided in a skilled nursing facility or intermediate care facility are informed of the feasible alternatives to the provision of skilled nursing facility or intermediate care facility services, which such individuals may choose if available under the waiver; and

Each State with a waiver under this subsection shall provide to the Secretary annually, consistent with a reasonable data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

"(3) A waiver granted under this subsection may include a waiver of the requirements of section 1902(a)(1) (relating to statewideness), section 1902(a)(10)(B) (relating to comparability), and section 1902(a)(10)(C)(i)(III) (relating to income and resource rules applicable in the community). Subject to a termination by the State (with notice to the Secretary) at any time, a waiver under this subsection shall be for an initial term of 3 years and, upon the request of a State, shall be extended for additional 5-year periods unless the Secretary determines that for the previous waiver period the assurances provided under paragraph (2) have not been met. A waiver may provide, with respect to post-eligibility treatment of income of all individuals receiving services under the waiver, that the maximum amount of the individual's income which may be disregarded for any month is equal to the amount that may be allowed for that purpose under a waiver under subsection (c).

"(4) A waiver under this subsection may, consistent with paragraph (2)—

"(A) limit the individuals provided benefits under such waiver to individuals with respect to whom the State has determined that there is a reasonable expectation that the amount of medical assistance provided with respect to the individual under such waiver will not exceed the amount of such medical assistance provided for such individual if the waiver did not apply, and

"(B) provide medical assistance to individuals for case management services, homemaker/home health aide services and personal care services, adult day health services, respite care, and other medical and social services that can contribute to the health and well-being of individuals and their ability to reside in a community-based care setting.

"(5)(A) In the case of a State having a waiver approved under this subsection, notwithstanding any other provision of section 1903 to the contrary, the total amount expended by the State for medical assistance with respect to skilled nursing facility services, intermediate care facility services, and home and community-based services under the State plan for individuals 65 years of age or older during a waiver year under this subsection may not exceed the projected amount determined under subparagraph (B).

"(B) For purposes of subparagraph (A), the projected amount under this subparagraph is the sum of the following:

"(i) The aggregate amount of the State's medical assistance under this title for skilled nursing facility services and intermediate care facility services furnished to individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent or the sum of—

"(I) the percentage increase (based on an appropriate market-basket index representing the costs of elements of such services) between the base year and the waiver year involved, plus

"(II) the percentage increase between the base year and the waiver year involved in the number of residents in the State who have attained the age of 65, plus

"(III) 2 percent for each year beginning after the base year and ending before the waiver year.

"(ii) The aggregate amount of the State's medical assistance under this title for home and community-based services for individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent or the sum of—

"(I) the percentage increase (based on an appropriate market-basket index representing the costs of elements of such services) between the base year and the waiver year involved, plus

"(II) the percentage increase between the base year and the waiver year involved in the number of residents in the State who have attained the age of 65, plus

"(III) 2 percent for each year beginning after the base year and ending before the waiver year.

In the case of a State that does not report actual final expenditures under this title to the Secretary on the basis of the age categories described in this subparagraph for a year ending before the date of the enactment of this subsection, such State (in order to be granted a waiver under this subsection for any waiver year with respect to which this subparagraph applies) must report such expenditures on such basis with respect to each fiscal year beginning on or after October 1, 1988.

"(C) In this paragraph:

"(i) The term 'home and community-based services' includes services described in sections 1905(a)(7) and 1905(a)(8), services described in paragraph (4)(B), personal care services, and services furnished pursuant to a waiver under subsection (c).

"(ii)(I) Subject to subclause (II), the term 'base year' means the most recent year (ending before the date of the enactment of this subsection) for which actual final expenditures under this title have been reported to, and accepted by, the Secretary.

"(II) For purposes of subparagraph (C), in the case of a State that does not report expenditures on the basis of the age categories described in such subparagraph for a year ending before the date of the enactment of this subsection, the term 'base year' means fiscal year 1989.

"(iii) The term 'intermediate care facility services' does not include services in an institution for mental diseases.

"(6)(A) A determination by the Secretary to deny a request for a waiver (or extension of waiver) under this subsection shall be subject to review to the extent provided under section 1116(b).

"(B) Notwithstanding any other provision of this Act, if the Secretary denies a request of the State for an extension of a waiver under this subsection, any waiver under this subsection in effect on the date such request is made shall remain in effect for a period of not less than 90 days after the date on which the Secretary denies such request (or, if the State seeks review of such determination in accordance with subparagraph (A), the date on which a final determination is made with respect to such review).".

(2)(A) Section 1902(a)(10)(A)(ii)(VI) of such Act (42 U.S.C. 1396a(a)(10)(A)(ii)(VI)) is amended by striking "section 1915(c)" each place it appears and inserting "subsection (c) or (d) of section 1915".

(B) Section 1915(h) of such Act, as redesignated by subsection (a), is amended by striking "(c)" and inserting in lieu thereof "(c) or (d)".

(3) In the case of a State which, as of December 1, 1987, has a waiver approved with respect to elderly individuals under section 1915(c) of the Social Security Act, which waiver is scheduled to expire before July 1, 1988, if the State notifies the Secretary of Health and Human Services of the State's intention to file an application for a waiver under section 1915(d) of such Act (as amended by subsection (a) of this section), the Secretary shall extend approval of the State's waiver, under section 1915(c) of such Act, on the same terms and conditions through July 1, 1988.

(b) TECHNICAL AMENDMENT RELATING TO WAIVERS FOR HOME AND COMMUNITY-BASED SERVICES.—Section 1915(c)(3) of such Act (42 U.S.C. 1396n(c)(3)) is amended by striking "and section 1902(a)(10)(B) (relating to comparability)" and inserting in lieu thereof ", section 1902(a)(10)(B) (relating to comparability), and section 1902(a)(10)(C)(i)(III) (relating to single standard for income and resource eligibility)".

(c) INCREASE IN NUMBER OF INDIVIDUALS WHO MAY BE SERVED UNDER MODEL HOME AND COMMUNITY-BASED SERVICE WAIVERS.—Section 1915(c) of such Act (42 U.S.C. 1396n(c)) is amended by adding at the end thereof the following: "No waiver under this subsection shall limit by an amount less than 200 the number of individuals in the State who may receive home and community-based services under such waiver.".

(d) TECHNICAL AMENDMENT RELATING TO EFFECTIVE DATE FOR PROVISION OF HABILITATION SERVICES.—Section 9502(j)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by inserting before the end period "without regard to the date on which the individual with respect to whom services are provided was discharged from a skilled nursing facility or intermediate care facility".

(e) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on January 1, 1988.

(2)(A) The amendment made by subsection (b) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

(B) The amendment made by subsection (c) shall become effective on the date of enactment of this Act.

(C) The amendment made by subsection (d) shall be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 4102. TREATMENT OF GARDEN STATE HEALTH PLAN.

(a) IN GENERAL.—Section 1903(m) of the Social Security Act (42 U.S.C. 1396(m)) is amended—

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

"(6)(A) For purposes of this subsection and section 1902(e)(2)(A), in the case of the State of New Jersey, the term 'contract' shall be deemed to include an undertaking by the State agency, in the State plan under

this title, to operate a program meeting all requirements of this subsection.

"(B) The undertaking described in subparagraph (A) must provide—

"(i) for the establishment of a separate entity responsible for the operation of a program meeting the requirements of this subsection, which entity may be a subdivision of the State agency administering the State plan under this title;

"(ii) for separate accounting for the funds used to operate such program;

"(iii) for setting the capitation rates and any other payment rates for services provided in accordance with this subsection using a methodology satisfactory to the Secretary designed to ensure that total Federal matching payments under this title for such services will be lower than the matching payments that would be made for the same services, if provided under the State plan on a fee for service basis to an actuarially equivalent population; and

"(iv) that the State agency will contract, for purposes of meeting the requirement under section 1902(a)(30)(C), with an organization or entity that under section 1154 reviews services provided by an eligible organization pursuant to a contract under section 1876 for the purpose of determining whether the quality of services meets professionally recognized standards of health care.

"(C) The undertaking described in subparagraph (A) shall be subject to approval (and annual re-approval) by the Secretary in the same manner as a contract under this subsection.

"(D) The undertaking described in subparagraph (A) shall not be eligible for a waiver under section 1915(b).''; and

(2) in paragraph (2)(F), by striking out all that precedes "a State plan may restrict" and inserting in lieu thereof the following:

"(F) In the case of—

(i) a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) which meets the requirement of subparagraph (A)(ii), or

"(ii) a program pursuant to an undertaking described in paragraph (6) in which at least 25 percent of the membership enrolled on a prepaid basis are individuals who (I) are not insured for benefits under part B of title XVIII or eligible for benefits under this title, and (II) (in the case of such individuals whose prepayments are made in whole or in part by any government entity) had the opportunity at the time of enrollment in the program to elect other coverage of health care costs that would have been paid in whole or in part by any governmental entity,".

(b) CONFORMING AMENDMENT.—Section 1902(e)(2)(A) (42 U.S.C. 1396a(e)(2)(A)) is amended by striking out "section 1903(m)(2)(G)" and inserting in lieu thereof "paragraph (2)(G) or (6) of section 1903(m)".

SEC. 4103. MEDICAID MATCHING RATE FOR QUALITY REVIEW OF HMO SERVICES.

(a) IN GENERAL.—Section 1903(a)(3)(C) of the Social Security Act (42 U.S.C. 1396b(a)(3)(C)) is amended by inserting "or by a private accreditation body in accordance with section 1902(a)(30)(C)" before the semicolon.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after the date of enactment of this Act.

SEC. 4104. PHYSICIANS' SERVICES FURNISHED BY DENTISTS.

(a) CLARIFYING COVERAGE.—Section 1905(a)(5) of the Social Security Act (42 U.S.C. 1396d(a)(5)) is amended by inserting "(A)" after "(5)" and by inserting before the semicolon at the end the following: ", and (B) medical and surgical services furnished by a dentist (described in section 1861(r)(2)) to the extent such services may be performed under State law either by a doctor of medicine or by a doctor of dental surgery or dental medicine and would be described in subparagraph (A) if furnished by a physician (as defined in section 1861(r)(1))".

(b) EFFECTIVE DATE.—

(1) The amendment made by subsection (a) applies (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act.

SEC. 4105. NEW YORK STATE PILOT PROGRAM FOR PRENATAL, MATERNITY, AND NEWBORN CARE.

(a) IN GENERAL.—Upon application by the State of New York and approval by the Secretary of Health and Human Services (in this section referred to as the "Secretary"), the State of New York (in this section referred to as the "State") may conduct a demonstration project in accordance with this section for the purpose of testing its Prenatal/Maternity/Newborn Care Pilot Program (in this section referred to as the "Program") as an alternative to existing Federal programs.

(b) NATURE OF PROJECT.—Under the demonstration project conducted under this section—

(1) any individual who receives benefits under the Program shall not receive any of such benefits under the plan of the State under title XIX of the Social Security Act; and

(2) the Secretary shall make payments to the State with respect to individuals receiving benefits under the Program in the same amounts as would be payable for such benefits under title XIX of the Social Security Act if such individuals were receiving such benefits under such title (as determined by the Secretary).

(c) WAIVERS.—The Secretary may (with respect to the demonstration project under this section) waive compliance with any requirements contained in title XIX of the Social Security Act which (if applied) would prevent the State from carrying out the project, effectively achieving its purpose, or receiving payments in accordance with subsection (b)(2).

(d) REQUIRED ASSURANCES.—As a condition of approval of the demonstration project under this section, the State shall provide assurances satisfactory to the Secretary that the State will continue to make benefits available under title XIX of the Social Security Act to all pregnant women entitled to receive benefits under such title to the extent such benefits are not provided under the Program.

(e) DURATION OF PROJECT.—The demonstration project under this section shall be conducted for a period not to exceed three years.

SEC. 4106. MEDICAID WAIVER FOR HOSPICE CARE FOR AIDS PATIENTS.

Section 1905(o)(1) of the Social Security Act (42 U.S.C. 1396d(o)(1)) is amended—

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

(2) by striking "The" and inserting in lieu thereof "Subject to subparagraph (B), the"; and

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

"(B)(i) For purposes of this title only, with respect to the definition of hospice program under section 1861(dd)(2), the Secretary may allow an agency or organization to make the assurance under subparagraph (A)(iii) of such section without taking into account any individual who is afflicted with acquired immunodeficiency syndrome.

"(ii) The Secretary shall establish appropriate procedures for making the allowance under clause (i).".

SEC. 4107. DELAY QUALITY CONTROL SANCTIONS FOR MEDICAID.

The Secretary of Health and Human Services shall not impose any reductions in payments to States pursuant to section 1903(u) of the Social Security Act for any calendar quarter beginning before July 1, 1988.

SEC. 4108. TECHNICAL AMENDMENTS RELATING TO NEW JERSEY RESPITE CARE PILOT PROJECT.

(a) CONDITIONS OF AGREEMENT.—Section 9414(b) of the Omnibus Budget Reconciliation Act of 1986 is amended—

(1) by redesignating paragraphs (2), (3), and (4), as paragraphs (3), (4), and (5), respectively,

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

"(2) provide that the State may submit a detailed proposal describing the project (in lieu of a formal request for the waiver of applicable provisions of title XIX of the Social Security Act) and that submission of such a description by the State will be treated as such a request for purposes of subsection (g),", and

(3) in paragraph (3), as redesignated by paragraph (1) of this subsection, by striking "if the project" and all that follows through "Act" the second place it appears and inserting in lieu thereof "the State shall utilize a post-eligibility cost-sharing formula based on the available income of participants with income in excess of the nonfarm income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981)".

(b) DEFINITIONS.—

(1) Section 9414(a) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "elderly and disabled individuals" and inserting in lieu thereof "eligible individuals".

(2) Section 9414(c) of the Omnibus Budget Reconciliation Act of 1986 is amended to read as follows:

"(c) DEFINITIONS.—or purposes of this section—

"(1) the term 'eligible individual' means an individual—

"(A) who is elderly or disabled,

"(B)(i) whose income (not including the income of the spouse or family of the individual) does not exceed 300 percent of the amount in effect under section 1611(a)(1)(A) of the Social Security Act (as increased pursuant to section 1617 of such Act), or

"(ii) in the case of an individual and spouse who are both dependent on a caregiver, whose combined incomes do not exceed such amount,

"(C) at the option of the State, who meets a resource standard established by the State,

"(D) who is at risk of institutionalization unless the individual's caregiver is provided with respite care, and

"(E) who has been determined to meet the requirements of subparagraphs (A) through (D) in accordance with an application process designed by the State; and

"(2) the term 'respite care services' shall include—

"(A) short-term and intermittent—

"(i) companion or sitter services (paid as well as volunteer),

"(ii) homemaker and personal care-services,

"(iii) adult day care, and

"(iv) inpatient care in a hospital, a skilled nursing facility, or an intermediate care facility (not to exceed a total of 14 days for any individual), and

"(B) peer support and training for family caregivers (using informal support groups and organized counseling).".

(c) PROVISIONS SUBJECT TO WAIVER.—Section 9414(g) of the Omnibus Budget Reconciliation Act of 1986 is amended by inserting "section 1902(a)(10)(C)(i)(III)," after "section 1902(a)(10)(B),".

(d) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4109. CONTINUED ELIGIBILITY AND RESTRICTION ON DISENROLLMENT WITHOUT CAUSE FOR METROPOLITAN HEALTH PLAN HMO.

For purposes of sections 1902(e)(2)(A) and 1903(m)(2)(F) of the Social Security Act, the Metropolitan Health Plan HMO operated by the New York City public hospitals shall be treated in the same manner as a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act).

Subpart III—Social Services and Income Security

SEC. 4111. NATIONAL COMMISSION ON CHILDREN.

(a) Part A of title XI of the Social Security Act is amended by adding at the end thereof the following:

"NATIONAL COMMISSION ON CHILDREN

"SEC. 1139. (a)(1) There is hereby established a commission to be known as the National Commission on Children (in this section referred to as the 'Commission').

"(b)(1) The Commission shall consist of—

"(A) twelve members to be appointed by the President,

"(B) twelve members to be appointed by the Speaker of the House of Representatives (in this section referred to as the 'Speaker'), and

"(C) twelve members to be appointed by the President pro tempore of the Senate (in this section referred to as the President pro tempore).

"(2) The President, the Speaker, and the President pro tempore shall each appoint as members of the Commission—

"(A) four individuals who—

"(i) are representatives of organizations providing services to children,

"(ii) are involved in activities on behalf of children, or

"(iii) have engaged in academic research with respect to the problems and needs of children,

"(B) four individuals who are elected or appointed public officials (at the Federal, State, or local level) involved in issues and programs relating to children, and

"(C) four individuals who are parents or representatives of parents or parents' organizations.

"(3) The appointments made pursuant to subparagraphs (B) and (C) of paragraph (1) shall be made in consultation with the chairmen of committees of the House of Representatives and the Senate, respectively, having jurisdiction over relevant Federal programs.

"(c)(1) It shall be the duty and function of the Commission to serve as a forum on behalf of the children of the Nation and to conduct the studies and issue the report required by subsection (d).

"(2) The Commission (and any committees that it may form) shall conduct public hearings in different geographic areas of the country, both urban and rural, in order to receive the views of a broad spectrum of the public on the status of the Nation's children and on ways to safeguard and enhance the physical, mental, and emotional well-being of all of the children of the Nation, including those with physical or mental disabilities, and others whose circumstances deny them a full share of the opportunities that parents of the Nation may rightfully expect for their children.

"(3) The Commission shall receive testimony from individuals, and from representatives of public and private organizations and institutions with an interest in the welfare of children, including educators, health care professionals, religious leaders, providers of social services, representatives of organizations with children as members, elected and appointed public officials, and from parents and children speaking in their own behalf.

"(d) Not later than September 30, 1988, the Commission shall submit a report to the President and the Congress that sets forth recommendations with respect to the following subjects:

"(1) Questions relating to the health of children that the Commission shall address include—

"(A) how to reduce infant mortality,

"(B) how to reduce the number of low birth-weight babies,

"(C) how to reduce the number of children with chronic illnesses and disabilities,

"(D) how to improve the nutrition of children,

"(E) how to promote the physical fitness of children,

"(F) how to ensure that pregnant women receive adequate prenatal care,

"(G) how to ensure that all children have access to both preventive and acute care health services, and

"(H) how to improve the quality and availability of health care for children;

in the context of the purposes of titles V and XIX of this Act and (as appropriate) other provisions of Federal law.

"(2) Questions relating to social and support services for children and their parents that the Commission shall address include—

"(A) how to prevent and treat child neglect and abuse,

"(B) how to provide help to parents who seek assistance in meeting the problems of their children,

"(C) how to provide counseling services for children,

"(D) how to strengthen the family unit,

"(E) how children can be assured of adequate care while their parents are working or participating in education or training programs,

"(F) how to improve foster care and adoption services,

"(G) how to reduce drug and alcohol abuse by children and youths, and

"(H) how to reduce the incidence of teenage pregnancy;

in the context of the purposes of title XX and parts B and E of title IV of this Act and (as appropriate) other provisions of Federal law.

"(3) Questions relating to education that the Commission shall address include—

"(A) how to encourage academic excellence for all children at all levels of education,

"(B) how to use preschool experiences to enhance educational achievement,

"(C) how to improve the qualifications of teachers,

"(D) how schools can better prepare the Nation's youth to compete in the labor market,

"(E) how parents and schools can work together to help children achieve success at each step of the academic ladder,

"(F) how to encourage teenagers to complete high school and remain in school to fulfill their academic potential,

"(G) how to address the problems of drug and alcohol abuse by young people,

"(H) how schools might lend support to efforts aimed at reducing the incidence of teenage pregnancy, and

"(I) how schools might better meet the special needs of children who have physical or mental handicaps;

in the context of the purposes of title XX and part B of title IV of this Act and (as appropriate) other provisions of Federal law.

"(4) Questions relating to income security that the Commission shall address include—

"(A) how to reduce poverty among children, and

"(B) how to ensure that parents support their children to the fullest extent possible through improved child support collection services, including services on behalf of children whose parents are unmarried;

in the context of the purposes of parts A, C, and D of title IV of this Act and (as appropriate) other provisions of Federal law.

"(5) In addition to addressing the questions specified in paragraphs (1) through (4), the Commission shall—

"(A) seek to identify ways in which public and private organizations and institutions can work together at the community level to identify deficiencies in existing services for families and children and to develop recommendations to ensure that the needs of families and children are met, using all available resources, in a coordinated and comprehensive manner,

"(B) assess the existing capacities of agencies to collect and analyze data on the status of children and on relevant programs, identify gaps in the data collection system, and recommend ways to improve the collection of data and the coordination among agencies in the collection and utilization of data, and

"(C) examine the extent to which programs under this Act can be used to meet

the needs of families and children and recommend any changes in such programs to make them more effective in meeting such needs.

The report required by this subsection shall be based upon the testimony received in the hearings conducted pursuant to subsection (c), and upon other data and findings developed by the Commission.

"(e)(1)(A) Members of the Commission shall be appointed not later than sixty days after the date of the enactment of this section, for terms ending on September 30, 1988.

"(B) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the vacant position was first filled.

"(2) The Commission shall elect one of its members to serve as Chairman of the Commission. The Chairman shall be a nonvoting member of the Commission.

"(3) A majority of the members of the Commission shall constitute a quorum for the transaction of business.

"(4)(A) The Commission shall meet at the call of the Chairman, or at the call of a majority of the members of the Commission.

"(B) The Commission shall meet not less than four times during the period beginning with the date of the enactment of this section and ending with September 30, 1988.

"(5) Decisions of the Commission shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

"(6) Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

"(f)(1) The Commission shall appoint an Executive Director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule under title 5, United States Code.

"(2) In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable, in accordance the provisions of title 5, United States Code, governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

"(g) In carrying out its duties, the Commission, or any duly organized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters for which it has a responsibility under this section, as the Commission or committee may deem advisable.

"(h)(1) The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to carry out its responsibilities.

"(2) Upon request of the Commission, any such department or agency shall furnish any such data or information.

"(i) The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

"(j) There are authorized to be appropriated such sums as may be necessary to carry out this section.".

SEC. 4112. BOARDER BABIES DEMONSTRATION PROJECT.

Section 426 of the Social Security Act (42 U.S.C. 626) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting immediately after subsection (a) the following new subsection:

"(b)(1) There are authorized to be appropriated $4,000,000 for each of the fiscal years 1988, 1989, and 1990 for grants by the Secretary to public or private entities submitting applications under this subsection for the purpose of conducting demonstration projects under this subsection to develop alternative care arrangements for infants who do not have health conditions that require hospitalization and who would otherwise remain in inappropriate hospital settings.

"(2) The demonstration projects conducted under this section may include—

"(A) projects designed to allow infants described in paragraph (1) to remain with a parent in a residential setting, where appropriate care for the infant and suitable treatment for the parent (including treatment for drug or alcohol addiction) may be assured, with the goal of rehabilitating the parent and eliminating the need for such care for the infant;

"(B) projects that assure appropriate, individualized care for such infants in a foster home or other non-medical residential setting in cases where such infant has been abandoned by his or her parents; and

"(C) such other projects as the Secretary determines will best serve the interests of such infants and will serve as models for projects that agencies or organizations in other communities may wish to develop.

"(3) In evaluating applications from entities proposing to conduct a demonstration project under this subsection, the Secretary shall give priority to those projects that—

"(A) serve areas most in need of alternative care arrangements for infants described in paragraph (1);

"(B) provide for adequate evaluation; and

"(C) meet such other criteria as the Secretary may prescribe.

"(4) Grants may be used to pay the costs of maintenance and of necessary medical and social services (to the extent that these costs are not otherwise paid for under other titles of this Act), and for such other purposes as the Secretary may allow.".

SEC. 4113. STUDY OF INFANTS AND CHILDREN WITH AIDS IN FOSTER CARE.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary"), together with the Comptroller General of the United States, shall conduct (or arrange for) a survey to determine—

(1) the total number of infants and children in the United States with acquired immune deficiency syndrome who have been placed in foster care;

(2) the problems encountered by social service agencies in placing infants and children with such syndrome in foster care; and

(3) the potential increase (over the five-year period beginning on the date of enactment of this Act) in the number of infants and children with such syndrome who will require foster care.

For purposes of this section, an infant or child with acquired immune deficiency syndrome includes an infant or child who is infected with the virus associated with such syndrome.

(b) RESTRICTION ON SCOPE OF SURVEY.—In conducting (or arranging for) the survey under subsection (a), the Secretary shall assure that survey activities do not duplicate research activities conducted by the Centers for Disease Control.

(c) REPORT.—Not later than 12 months after the date of enactment of this Act, the Secretary shall report to the Congress on the results of the survey conducted under subsection (a) and shall make recommendations to the Congress with respect to improving the care of infants and children with acquired immune deficiency syndrome who lack ongoing parental involvement and support.

SEC. 4114. CHILD SUPPORT DEMONSTRATION PROGRAM IN NEW YORK STATE.

(a) IN GENERAL.—Upon application by the State of New York and approval by the Secretary of Health and Human Services (in this section referred to as the "Secretary"), the State of New York (in this section referred to as the "State") may conduct a demonstration program in accordance with this section for the purpose of testing a State program as an alternative to the program of Aid to Families with Dependent Children under title IV of the Social Security Act.

(b) NATURE OF PROGRAM.—Under the demonstration program conducted under this section—

(1) all custodial parents of dependent children who are eligible for supplements under the State plan approved under section 402(a) of the Social Security Act (and such other types or classes of such parents as the State may specify) may elect to receive benefits under the State's Child Support Supplement Program in lieu of supplements under such plan; and

(2) the Federal government will pay to the State with respect to families receiving benefits under the State's Child Support Supplement Program the same amounts as would have been payable with respect to such families under sections 403 and 1903 of the Social Security Act as if the families were receiving aid and medical assistance under the State plans in effect with respect to such sections.

(c) WAIVERS.—The Secretary shall (with respect to the program under this section) waive compliance with any requirements contained in title IV of the Social Security Act which (if applied) would prevent the State from carrying out the program or effectively achieving its purpose.

(d) CONDITIONS OF APPROVAL.—As a condition of approval of the program under this section, the State shall—

(1) provide assurances satisfactory to the Secretary that the State—

(A) will continue to make assistance available to all eligible children in the State who are in need of financial support, and

(B) will continue to operate an effective child support enforcement program;

(2) agree—

(A) to have the program evaluated, and

(B) to report interim findings to the Secretary at such times as the Secretary shall provide; and

(3) satisfy the Secretary that the program will be evaluated using a reasonable methodology that can determine whether changes in work behavior and changes in earnings are attributable to participation in the program.

(e) APPLICATION PROCESS.—In order to participate in the program under this section, the State must submit an application under this section not later than two years after the date of enactment of this Act. The Sec-

retary shall approve or disapprove the application of the State not later than 90 days after the date of its submission. If the application is disapproved, the Secretary shall provide to the State a statement of the reasons for such disapproval, of the changes needed to obtain approval, and of the date by which the State may resubmit the application.

(f) EFFECTIVE DATE.—The program under this section shall commence not later than the first day of the third calendar quarter beginning on or after the date on which the application of the State is approved in accordance with subsection (e).

(g) DURATION OF PROGRAM.—

(1) Except as provided in paragraph (2), if the Secretary approves the application of the State, the demonstration program under this section shall be conducted for a period not to exceed five years.

(2)(A) The Governor of the State may before the end of the period described in paragraph (1) terminate the demonstration program under this section if the Governor finds that the program is not successful in testing the State's Child Support Supplement Program as an alternative to the program under title IV of the Social Security Act. The Governor shall notify the Secretary of the decision to terminate the program not less than three months prior to the date of such termination.

(B) The Secretary may terminate the program before the end of such period if the Secretary finds that the program is not in compliance with the terms of the application. The Secretary shall notify the Governor of the decision to terminate the program not less than three months prior to the date of such termination.

SEC. 4115. DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM.

(a) IN GENERAL.—Upon application of the State of Washington and approval by the Secretary of Health and Human Services, the State of Washington (in this section referred to as the "State") may conduct a demonstration project in accordance with this section for the purpose of testing whether the operation of its Family Independence Program enacted in May 1987 (in this section referred to as the "Program"), as an alternative to the AFDC program under title IV of the Social Security Act, would more effectively break the cycle of poverty and provide families with opportunities for economic independence and strengthened family functioning.

(b) NATURE OF PROJECT.—Under the demonstration project conducted under this section—

(1) every individual eligible for aid under the State plan approved under section 402(a) of the Social Security Act shall be eligible to enroll in the Program, which shall operate simultaneously with the AFDC program so long as there are individuals who qualify for the latter;

(2) cash assistance shall be furnished in a timely manner to all eligible individuals under the Program (and the State may not make expenditures for services under the Program until it has paid all necessary cash assistance), with no family receiving less in cash benefits than it would have received under the AFDC program;

(3) individuals may be required to register, undergo assessment, and participate in work, education, or training under the Program, except that—

(A) work or training may not be required in the case of—

(i) a single parent of a child under six months of age, or more than one parent of such a child in a two-parent family,

(ii) a single parent with a child of any age who has received assistance for less than six months,

(iii) a single parent with a child under three years of age who has received assistance for less than three years,

(iv) an individual under 16 years of age or over 64 years of age,

(v) an individual who is incapacitated, temporarily ill, or needed at home to care for an impaired person, or

(vi) an individual who has not yet been individually notified in writing of such requirement or of the expiration of his or her exempt status under this subparagraph;

(B) participation in work or training shall in any case be voluntary during the first two years of the Program, and may thereafter be made mandatory only in counties where more than 50 percent of the enrollees can be placed in employment within three months after they are job ready;

(C) in no case shall the work and training aspect of the Program be mandated in any county where the unemployment level is at least twice the State average; and

(D) mandated work shall not include work in any position created by a reduction in the work force, a bona fide labor dispute, the decertification of a bargaining unit, or a new job classification which subverts the intention of the Program;

(4) there shall be no change in existing State law which would eliminate guaranteed benefits or reduce the rights of applicants or enrollees; and

(5) the Program shall include due process guarantees and procedures no less than those which are available to participants in the AFDC program under Federal law and regulation and under State law.

(c) WAIVERS.—The Secretary shall (with respect to the project under this section) waive compliance with any requirements contained in title IV of the Social Security Act which (if applied) would prevent the State from carrying out the project or effectively achieving its purpose, or with the requirements of sections 1902(a)(1), 1902(e)(1), and 1916 of that Act (but only to the extent necessary to enable the State to carry out the program as enacted by the State in April 1987).

(d) FUNDING.—

(1) The Secretary shall under section 403(b) or 1903(d) of the Social Security Act (as may be appropriate) reimburse the State for its expenditures under the Program—

(A) at a rate equal to the Federal matching rate applicable to the State under section 403(a)(1) (or 1118) of the Social Security Act, for cash assistance, medical assistance, and child care provided to enrollees;

(B) at a rate equal to the applicable Federal matching rate under section 403(a)(3) of such Act, for administrative expenses; and

(C) at the rate of 75 percent for an evaluation plan approved by the Secretary.

(2) As a condition of approval of the project under this section, the State must provide assurances satisfactory to the Secretary that the total amount of Federal reimbursement over the period of the project will not exceed the anticipated Federal reimbursements (over that period) under the AFDC and Medicaid programs; but this paragraph shall not prevent the State from claiming reimbursement for additional persons who would qualify for assistance under the AFDC program, for costs attributable to increases in the State's payment standard, or for any other federally-matched benefits or services.

(e) EVALUATION.—The State must satisfy the Secretary that the program will be evaluated using a reasonable methodology.

(f) DURATION OF PROJECT.—

(1) The project under this section shall begin on the date on which the first individual is enrolled in the Program and (subject to paragraph (2)) shall end five years after that date.

(2) The project may be terminated at any time, on six months written notice, by the State or (upon a finding that the State has materially failed to comply with this section) by the Secretary.

SEC. 4116. REPEAL OF UNNECESSARY CHILD SUPPORT REVOLVING FUND.

(a) IN GENERAL.—Section 452(c) of the Social Security Act (42 U.S.C. 652(c)) is amended to read as follows:

"(c) The Secretary of the Treasury shall from time to time pay to each State for distribution in accordance with the provisions of section 457 the amount of each collection made on behalf of such State pursuant to subsection (b).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to amounts collected after the date of enactment of this Act.

SEC. 4117. DEMONSTRATION PROGRAM TO ASSIST HOMELESS INDIVIDUALS IN OBTAINING SSI BENEFITS.

(a) ESTABLISHMENT OF DEMONSTRATION PROGRAM.—

(1) In order to demonstrate and test the feasibility of developing and using special procedures to ensure that all homeless individuals in shelters fully and clearly understand their rights to benefits under the SSI program and other programs established under the Social Security Act, to provide such individuals with all possible assistance in applying for such benefits and obtaining the information and documentation necessary for that purpose, and to ensure that all such individuals receive the benefits to which they are entitled under such programs, up to 10 States may each create an SSI Outreach Team Project in accordance with this section. Each project approved under this section shall meet such conditions and requirements, consistent with this section, as the Secretary of Health and Human Services (in this section referred to as the Secretary) shall prescribe.

(2)(A) The Secretary shall consider all applications received from States desiring to conduct SSI Outreach Team Projects under this section and shall approve up to 10 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this section.

(B) Of the projects approved under paragraph (1), 5 shall commence their operations during the fiscal year 1988 and the remainder shall commence their operations during the fiscal year 1989, as designated by the Secretary at the time of such approval.

(3) The Secretary shall make grants to the States whose applications are approved under paragraph (2) in order to cover the costs incurred by such States in carrying out their SSI Outreach Team Projects, including the costs of staff, administration, transportation, and other necessary expenses. The cost of each such project shall not exceed $250,000 a year, except that the Secretary may in any particular case permit the State to incur costs in excess of such amount (and increase the amount of the

grant accordingly), to the extent that appropriated funds are available therefor, if the State satisfactorily demonstrates that higher costs must be incurred in order to properly serve the homeless within the project area.

(b) WAIVERS.—The Secretary may waive any and all requirements, restrictions, and limitations (contained in title XVI of the Social Security Act or in regulations prescribed thereunder, or in any other law or regulation) which could prevent or hinder the operation of the demonstration program under this section.

(c) INFORMATION AND REPORTS; EVALUATION.—

(1) Each State having an approved SSI Outreach Team Project shall periodically submit to the Secretary such information (with respect to the project) as may be necessary to enable the Secretary to evaluate such project in particular and the demonstration program under this section in general.

(2)(A) The Secretary shall from time to time (but not less often than annually) submit to the Congress a full and complete report on the program under this section, together with a detailed evaluation of such program and of the projects thereunder along with such recommendations as may be deemed appropriate. Such evaluation and such recommendations shall be designed to serve as a basis for determining whether (and to what extent) the activities and procedures included in the demonstration program under this section should be continued, expanded, or modified, or converted (with or without changes) into a regular feature of permanent law.

(B) The criteria used by the Secretary in evaluating the program and the projects thereunder shall not be limited to those which would normally be used in evaluating programs and activities of the kind involved, but shall fully take into account the special circumstances of the homeless and their need for personalized attention and follow-through assistance, and shall emphasize the extent to which the procedures and assistance made available to applicants under such projects are recognizing those circumstances and meeting that need.

(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated to the Secretary—

(1) the sum of $1,250,000 for the fiscal year 1988;

(2) the sum of $2,500,000 for the fiscal year 1989; and

(3) such sums as may be necessary for each fiscal year thereafter.

SEC. 4118. MODIFICATION OF INTERIM ASSISTANCE REIMBURSEMENT PROGRAM.

(a) IN GENERAL.—Section 1631(g)(2) of the Social Security Act (42 U.S.C. 1383(g)(2)) is amended in the first sentence by striking "at the time the Secretary makes the first payment of benefits" and inserting in lieu thereof "at the time the Secretary makes the first payment of benefits with respect to the period described in clause (A) or (B) of paragraph (3)".

(b) DEFINITION OF INTERIM ASSISTANCE.—Section 1631(g)(3) of such Act (42 U.S.C. 1383(g)(3)) is amended—

(1) by inserting "(A)" after "basic needs"; and

(2) by inserting before the period at the end the following: ", or (B) during the period beginning with the first month for which the individual's benefits (as defined in paragraph (2)) have been terminated or suspended if the individual was subsequently found to have been eligible for such benefits".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective with the 13th month following the month in which this Act is enacted, or, if sooner, with the first month for which the Secretary of Health and Human Services determines that it is administratively feasible.

SEC. 4119. DEMONSTRATION PROGRAM TO PROVIDE SELF-EMPLOYMENT ALLOWANCE FOR ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—The Secretary of Labor (hereinafter in this section referred to as the "Secretary") shall carry out a demonstration program under this section for the purpose of making available self-employment allowances to eligible individuals. To carry out such program, the Secretary shall enter into agreements with three States that—

(1) apply to participate in such program, and

(2) demonstrate to the Secretary that they are capable of implementing the provisions of the agreement.

(b) SELECTION OF STATES.—

(1) In determining whether to enter into an agreement with a State under this section, the Secretary shall take into consideration at least—

(A) the availability and quality of technical assistance currently provided by agencies of the State to the self-employed;

(B) existing local market conditions and the business climate for new, small business enterprises in the State;

(C) the adequacy of State resources to carry out a regular unemployment compensation program and a program under this section;

(D) the range and extent of specialized services to be provided by the State to individuals covered by such an agreement;

(E) the design of the evaluation to be applied by the State to the program; and

(F) the standards which are to be utilized by the State for the purpose of assuring that individuals who will receive self-employment assistance under this section will have sufficient experience (or training) and ability to be self employed.

(2) The Secretary may not enter into an agreement with any State under this section unless the Secretary makes a determination that the State's unemployment compensation program has adequate reserves.

(c) PROVISIONS OF AGREEMENT.—Any agreement entered into with a State under this section shall provide that—

(1) each individual who is an eligible individual with respect to any benefit beginning during the three-year period commencing on the date on which such agreement is entered into shall receive a self-employment allowance;

(2) self-employment allowances made to any individual under this section shall be made in the same amount, on the same terms, and subject to the same conditions as regular or extended unemployment compensation, as the case may be, paid by such State; except that—

(A) State and Federal requirements relating to availability for work, active search for work, or refusal to accept suitable work shall not apply to such individual; and

(B) such individual shall be considered to be unemployed for purposes of the State and Federal laws applicable to unemployment compensation,

as long as the individual meets the requirements applicable under this section to such individual;

(3) to the extent that such allowances are made to an individual under this section, an amount equal to the amount of such allowances shall be charged against the amount that may be paid to such individual under State law for regular or extended unemployment compensation, as the case may be;

(4) the total amount paid to an individual with respect to any benefit year under this section may not exceed the total amount that could be paid to such individual for regular or extended unemployment compensation, as the case may be, with respect to such benefit year under State law;

(5) the State shall implement a program that—

(A) is approved by the Secretary;

(B) will not result in any cost to the Unemployment Trust Fund established by section 904(a) of the Social Security Act in excess of the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section;

(C) is designed to select and assist individuals for self-employment allowances, monitor the individual's self-employment, and provide, as described in subsection (d), to the Secretary a complete evaluation of the use of such allowances; and

(D) otherwise meets the requirements of this section; and

(6) the State, from its general revenue funds, shall—

(A) repay to the Unemployment Trust Fund any cost incurred by the State and charged to the Fund which exceeds the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section; and

(B) in any case in which any excess cost described in subparagraph (A) is not repaid in the fiscal year in which it was charged to the Fund, pay to the Fund an amount of interest, on the outstanding balance of such excess cost, which is sufficient (when combined with any repayment by the State described in subparagraph (A)) to reimburse the Fund for any loss which would not have been incurred if such excess cost had not been incurred.

(d) EVALUATION.—

(1) Each State that enters into an agreement under this section shall carry out an evaluation of its activities under this section. Such evaluation shall be based on a treatment group and a control group with not more than one-half of the individuals receiving assistance at any one time being assigned to the treatment group.

(2) The Secretary shall use the data provided from such evaluation to analyze the benefits and the costs of the program carried out under subsection (g), and to estimate any excess costs described in subsection (c)(6)(A).

(e) FINANCING.—

(1) Notwithstanding section 303(a)(5) of the Social Security Act and section 3304(a)(4) of the Internal Revenue Code of 1986, amounts in the unemployment fund of a State may be used by a State to make payments (exclusive of expenses of administration) for self-employment allowances made under this section to an individual who is receiving them in lieu of regular unemployment compensation.

(2) In any case in which a self-employment allowance is made under this section to an individual in lieu of extended unemployment compensation under the Federal-State Extended Unemployment Compensa-

tion Act of 1970, payments made under this section for self-employment allowances shall be considered to be compensation described in section 204(a)(1) of such Act and paid under State law.

(f) LIMITATION.—No funds made available to a State under title III of the Social Security Act or any other Federal law may be used for the purpose of administering the program carried out by such State under this section.

(g) REPORT TO CONGRESS.—

(1) Not later than two years after the date of enactment of this Act, the Secretary shall submit an interim report to the Congress on the effectiveness of the demonstration program carried out under this section. Such report shall include—

(A) information on the extent to which this section has been utilized;

(B) an analysis of any barriers to such utilization; and

(C) an analysis of the feasibility of extending the provisions of this section to individuals not covered by State unemployment compensation laws.

(2) Not later than four years after the date of the enactment of this Act, the Secretary shall submit a final report to the Congress on such program.

(h) FRAUD AND OVERPAYMENTS.—

(1) If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received payment under this section to which he was not entitled, such individual shall be—

(A) ineligible for further assistance under this section; and

(B) subject to prosecution under section 1001 of title 18, United States Code.

(2)(A) If any person received any payment under this section to which such person was not entitled, the State is authorized to require such person to repay such assistance; except that the State agency may waive such repayment if it determines that—

(i) the providing of such assistance or making of such payment was without fault on the part of such person; and

(ii) such repayment would be contrary to equity and good conscience.

(B) No repayment shall be required under subparagraph (A) until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the person, and the determination has become final. Any determination under such subparagraph shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

(i) DEFINITIONS.—For purposes of this section—

(1) the term "eligible individual" means, with respect to any benefit year, an individual who—

(A) is eligible to receive regular or extended compensation under the State law during such benefit year;

(B) is likely to receive unemployment compensation for the maximum number of weeks that such compensation is made available under the State law during such benefit year;

(C) submits an application to the State agency for a self-employment allowance under this section; and

(D) meets applicable State requirements,

except that not more than (i) 3 percent of the number of individuals eligible to receive their regular compensation in a State at beginning of a fiscal year, or (ii) the number of persons who exhausted their unemployment compensation benefits in the fiscal year ending before such fiscal year, whichever is lesser, may be considered as eligible individuals for such State for purposes of this section during such fiscal year;

(2) the term "self-employment allowance" means compensation paid under this section for the purpose of assisting an eligible individual with such individual's self-employment; and

(3) the terms "compensation", "extended compensation", "regular compensation", "benefit year", "State", and "State law", have the respective meanings given to such terms by section 205 of the Federal-State Extended Unemployment Compensation Act of 1979.

SEC. 4120. MODIFICATION OF EFFECTIVE DATE WITH RESPECT TO STATE COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING EXTENDED BENEFITS UNDER THE UNEMPLOYMENT INSURANCE PROGRAM.

(a) IN GENERAL.—Section 1024(b) of the Omnibus Reconciliation Act of 1980 is amended to read as follows:

"(b)(1) Except as provided in paragraph (2), the amendment made by this section shall apply with respect to weeks of unemployment beginning after October 1, 1981.

"(2) In the case of a State the legislature of which does not meet in a regular session during calendar year 1981, the amendment made by this section shall apply with respect to weeks of unemployment beginning after October 31, 1982.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as if included in the enactment of the Omnibus Reconciliation Act of 1980.

SEC. 4121. ASSISTANCE TO HOMELESS AFDC FAMILIES.

The Secretary of Health and Human Services shall take no action on or after December 1, 1987, (by regulation or otherwise) to prevent a State, prior to October 1, 1988, from including in its standard of need with respect to applicants for or recipients of aid under the State plan approved under section 402 of such Act (as a special need for individuals who would otherwise be homeless) an amount for shelter and related needs that varies according to geographic location, family circumstance, or the type of living accommodation occupied.

Subtitle B—Revenue Provisions

SEC. 4500. SHORT TITLE; AMENDMENT TO THE INTERNAL REVENUE CODE OF 1986; TABLE OF CONTENTS.

(a) SHORT TITLE.—This subtitle may be cited as the "Revenue Amendments of 1987".

(b) AMENDMENT TO THE INTERNAL REVENUE CODE OF 1986.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

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Sec. 4589. Coverage of all cash pay of agricultural employees whose employers spend $2,500 or more a year for agricultural labor.
Sec. 4590. Coverage of the employer cost of group-term life insurance.
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Sec. 4595. Fees for requests for ruling, determination, and similar letters.
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PART XI—DEBT COLLECTION

Sec. 4601. 3-year extension of provisions relating to collection of non-tax debts owned to Federal agencies.

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Sec. 4612. Modifications of estate tax deduction for sale of employer securities.
Sec. 4613. Excise taxes on plans or cooperatives disposing of employer securities for which estate tax deduction was allowed.

PART I—ACCOUNTING PROVISIONS

SEC. 4501. REPEAL OF RESERVE FOR ACCRUAL OF VACATION PAY.

(a) GENERAL RULE.—Section 463 (relating to accrual of vacation pay) is hereby repealed.

(b) TECHNICAL AMENDMENTS.—

(1) Section 81 is hereby repealed.

(2) Subparagraph (B) of section 404(b)(2) is amended to read as follows:

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any benefit provided through a welfare benefit fund (as defined in section 419(e))."

(3) Paragraph (2) of section 419(e) is amended by inserting "or" at the end of subparagraph (B), by striking out ", or" at the end of subparagraph (C), and inserting in lieu thereof a period, and by striking out subparagraph (D).

(4) Paragraph (5) of section 461(h) is amended to read as follows:

"(5) SUBSECTION NOT TO APPLY TO CERTAIN ITEMS.—This subsection shall not apply to any item for which a deduction is allowable under a provision of this title which specifically provides for a deduction for a reserve for estimated expenses."

(5) The table of sections for part II of subchapter B of chapter 1 is amended by striking out the item relating to section 81.

(6) The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by striking out the item relating to section 463.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who elected to have section 463 of the Internal Revenue Code of 1986 apply for such taxpayer's last taxable year beginning before January 1, 1988, and who is required to change his method of accounting by reason of the amendments made by this section—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as having been made with the consent of the Secretary, and

(C) the net amount of adjustments required by section 481 of such Code to be taken into account by the taxpayer—

(i) shall be reduced by the balance in the suspense account under section 463(c) of such Code as of the close of such last taxable year, and

(ii) shall be taken into account over the 4-taxable year period beginning with the taxable year following such last taxable year as follows:

In the case of the:	The percentage taken into account is:
1st year	10
2nd year	50
3rd year	15
4th year	25.

"Notwithstanding subparagraph (C)(ii), if the period the adjustments are required to be taken into account under section 481 of such Code is less than 4 years, such adjustments shall be taken into account ratably over such shorter period.

SEC. 4502. REPEAL OF INSTALLMENT METHOD FOR DEALERS IN PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 453(b)(2) (relating to exemptions from installment sales) is amended to read as follows:

"(A) DEALER DISPOSITIONS.—Any dealer disposition (as defined in section 453A)."

(b) DEALER DISPOSITION DEFINED.—Section 453A (relating to installment method for dealers in personal property) is amended to read as follows:

"SEC. 453A. DEALER DISPOSITIONS.

"(a) IN GENERAL.—For purposes of section 453(b)(2)(A), the term 'dealer disposition' means any of the following dispositions:

"(1) PERSONAL PROPERTY.—Any disposition of personal property by a person who regularly sells or otherwise disposes of personal property on the installment plan.

"(2) REAL PROPERTY.—Any disposition of real property which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business.

"(b) EXCEPTIONS.—The term 'dealer disposition' does not include—

"(1) FARM PROPERTY.—The disposition on the installment plan of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).

"(2) TIMESHARES AND RESIDENTIAL LOTS.—Dispositions on the installment plan described in section 453C(e)(4)(A)(i) (relating to timeshares and residential lots) if the taxpayer elects to have subparagraphs (B) and (C) of section 453C(e)(4) apply to any installment obligations which arise from such dispositions. An election under this paragraph shall not apply with respect to an installment obligation which is guaranteed by any person other than an individual. Any carrying charges or interest with respect to a disposition described in paragraph (1) or (2) shall be included in the total contract price of the property (and added on the books of account of the seller to the established cash selling price of such property) and, if such charges or interest are not so included, any payments received shall be treated as applying first against such carrying charges or interest."

(c) CONFORMING AMENDMENTS.—

(1) Sections 381(c)(8) and 691(a)(4) and (5) are each amended by striking out "or 453A" each place it appears.

(2) Section 56(a)(6)(B) is amended by inserting "an" before "applicable".

(3) Section 56(a)(6) is amended by striking out "or 453A".

(4) Sections 453C(a) and (c)(1) are each amended by striking out "and 453A".

(5) Section 453C(b) is amended—

(A) by striking out "average quarterly indebtedness for" in paragraph (1)(A) and inserting in lieu thereof "indebtedness as of the close of",

(B) by striking out "average quarterly" in paragraph (3)(B), and

(C) by striking out paragraph (4).

(6) Clause (i) of section 453C(e)(1)(A) is amended to read as follows:

"(i) which arises from the disposition after August 16, 1986, of real property under the installment method which is property used in the taxpayer's trade or business or property held for the production of rental income, but only if the sales price of such property exceeds $150,000 (determined after application of the rule under the last sentence of section 1274(c)(3)(A)(ii)), and".

(7) Section 453C(e)(5)(C) is amended by striking out "subsection (b)(4) shall not apply" and inserting in lieu thereof "subsection (b) shall be applied by taking into account average quarterly indebtedness".

(8) The table of sections for subpart B of part II of subchapter B of chapter 1 is amended by striking out the item relating to section 453A and inserting in lieu thereof the following new item:

"Sec. 453A. Dealer dispositions."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to installment obligations arising from dispositions after December 31, 1987.

(2) SPECIAL RULES FOR OBLIGATIONS ARISING FROM DISPOSITIONS AFTER FEBRUARY 28, 1986, AND BEFORE JANUARY 1, 1988.—

(A) IN GENERAL.—In the case of an applicable installment obligation arising from a disposition described in subclause (I) or (II) of section 453C(e)(1)(A)(i) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section) before January 1, 1988, the amendments made by this section shall apply to taxable years beginning after December 31, 1987.

(B) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who is required by subparagraph (A) to change its method of accounting for any taxable year with respect to obligations described in subparagraph (A)—

(i) such change shall be treated as initiated by the taxpayer,

(ii) such change shall be treated as made with the consent of the Secretary of the Treasury or his delegate, and

(iii) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 shall be taken into ac-

count over a period not longer than 4 taxable years.

(3) COORDINATION WITH TAX REFORM ACT OF 1986.—The amendments made by this section shall not apply to any installment obligation or to any taxpayer during any period to the extent the amendments made by section 811 of the Tax Reform Act of 1986 do not apply to such obligation or during such period.

SEC. 4503. AMORTIZATION OF PAST SERVICE PENSION COSTS.

(a) IN GENERAL.—For purposes of section 263A of the Internal Revenue Code of 1986 (relating to inventory costs capitalization), the allocable costs (within the meaning of section 263A(a)(2) of such Code) with respect to any property shall include contributions paid to or under a pension or annuity plan whether or not such contributions represent past service costs.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Subsection (a) shall apply to taxable years beginning after December 31, 1987.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who is required by this section to change its method of accounting for any taxable year—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary of the Treasury or his delegate, and

(C) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period not longer than 4 taxable years.

SEC. 4504. CERTAIN FARM CORPORATIONS REQUIRED TO USE ACCRUAL METHOD OF ACCOUNTING.

(a) GENERAL RULE.—Section 447 (relating to method of accounting for corporations engaged in farming) is amended by striking out subsections (c) and (e), by redesignating subsection (d) as subsection (e), and by inserting after subsection (b) the following new subsections:

"(c) EXCEPTION FOR CERTAIN CORPORATIONS.—For purposes of subsection (a), a corporation shall be treated as not being a corporation if it is—

"(1) an S corporation, or

"(2) a corporation the gross receipts of which meet the requirements of subsection (d).

"(d) GROSS RECEIPTS REQUIREMENTS.—

"(1) IN GENERAL.—A corporation meets the requirements of this subsection if, for each prior taxable year beginning after December 31, 1975, such corporation (and any predecessor corporation) did not have gross receipts exceeding $1,000,000. For purposes of the preceding sentence, all corporations which are members of the same controlled group of corporations (within the meaning of section 1563(a)) shall be treated as 1 corporation.

"(2) SPECIAL RULES FOR FAMILY CORPORATIONS.—

"(A) IN GENERAL.—In the case of a family corporation, paragraph (1) shall be applied—

"(i) by substituting 'December 31, 1985,' for 'December 31, 1975,'; and

"(ii) by substituting '$25,000,000' for '$1,000,000'.

"(B) GROSS RECEIPTS TEST.—

"(i) CONTROLLED GROUPS.—Notwithstanding the last sentence of paragraph (1), in the case of a family corporation—

"(I) except as provided by the Secretary, only the applicable percentage of gross receipts of any other member of any controlled group of corporations of which such corporation is a member shall be taken into account, and

"(II) under regulations, gross receipts of such corporation or of another member of such group shall not be taken into account by such corporation more than once.

"(ii) PASS-THRU ENTITIES.—For purposes of paragraph (1), if a family corporation holds directly or indirectly any interest in a partnership, estate, trust or other pass-thru entity, such corporation shall take into account its proportionate share of the gross receipts of such entity.

"(iii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the term 'applicable percentage' means the percentage equal to a fraction—

"(I) the numerator of which is the fair market value of the stock of another corporation held directly or indirectly as of the close of the taxable year by the family corporation, and

"(II) the denominator of which is the fair market value of all stock of such corporation as of such time.

For purposes of this clause, the term 'stock' does not include stock described in section 1563(c)(1)."

"(C) FAMILY CORPORATION.—For purposes of this section, the term 'family corporation' means—

"(i) any corporation if at least 50 percent of the total combined voting power of all classes of stock entitled to vote, and at least 50 percent of all other classes of stock of the corporation, are owned by members of the same family, and

"(ii) any corporation described in subsection (h)."

(b) SUSPENSE ACCOUNT IN LIEU OF 481 ADJUSTMENTS.—Section 447 is amended by adding at the end thereof the following new subsection:

"(i) SUSPENSE ACCOUNT FOR FAMILY CORPORATIONS.—

"(1) IN GENERAL.—If any family corporation is required by this section to change its method of accounting for any taxable year (hereinafter in this subsection referred to as the 'year of the change'), notwithstanding subsection (f), such corporation shall establish a suspense account under this subsection in lieu of taking into account adjustments under section 481(a) with respect to amounts included in the suspense account.

"(2) INITIAL OPENING BALANCE.—The initial opening balance of the account described in paragraph (1) shall be the lesser of—

"(A) the net adjustments which would have been required to be taken into account under section 481 but for this subsection, or

"(B) the amount of such net adjustments determined as of the close of the 2nd taxable year preceding the year of change.

If the amount referred to in subparagraph (A) exceeds the amount referred to in subparagraph (B), notwithstanding paragraph (1), such excess shall be taken into account under section 481 in the year of the change.

"(3) REDUCTION IN ACCOUNT IF FARMING BUSINESS CONTRACTS.—If—

"(A) the gross receipts of the corporation from the trade or business of farming for the year of the change or any subsequent taxable year, is less than

"(B) such gross receipts for the taxpayer's last taxable year beginning before the year of the change (or for the most recent taxable year for which a reduction in the suspense account was made under this paragraph),

the amount in the suspense account (after taking into account prior reductions) shall be reduced by the percentage by which the amount described in subparagraph (A) is less than the amount described in subparagraph (B).

"(4) INCOME INCLUSION.—Any reduction in the suspense account under paragraph (3) shall be included in gross income.

"(5) INCLUSION WHERE CORPORATION CEASES TO BE A FAMILY CORPORATION.—If the corporation ceases to be a family corporation during any taxable year, the amount in the suspense account (after taking into account prior reductions) shall be included in gross income for such taxable year.

"(6) SUBCHAPTER C TRANSACTIONS.—The application of this subsection with respect to a taxpayer which is a party to any transaction with respect to which there is nonrecognition of gain or loss to any party by reason of subchapter C shall be determined under regulations prescribed by the Secretary."

(c) TECHNICAL AMENDMENTS.—

(1) Subsection (e) of section 447 (as redesignated by subsection (a)) is amended by striking out "subsection (c)(2)" and inserting in lieu thereof "subsection (d)".

(2) Paragraph (1) of section 447(h) is amended—

(A) by striking out "This section shall not apply to any corporation" and inserting in lieu thereof "A corporation is described in this subsection",

(B) by striking out "subsection (d)" each place it appears and inserting in lieu thereof "subsection (e)", and

(C) by striking out "subsection (d)(1)" each place it appears and inserting in lieu thereof "subsection (e)(1)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

PART II—ESTIMATED TAX PROVISIONS

SEC. 4511. REVISION OF CORPORATE ESTIMATED TAX PROVISIONS.

(a) GENERAL RULE.—Section 6655 (relating to failure by corporation to pay estimated income tax) is amended to read as follows:

"SEC. 6655. FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX.

"(a) ADDITION TO TAX.—Except as otherwise provided in this section, in the case of any underpayment of estimated tax by a corporation, there shall be added to the tax under chapter 1 for the taxable year an amount determined by applying—

"(1) the underpayment rate established under section 6621,

"(2) to the amount of the underpayment,

"(3) for the period of the underpayment.

"(b) AMOUNT OF UNDERPAYMENT; PERIOD OF UNDERPAYMENT.—For purposes of subsection (a)—

"(1) AMOUNT.—The amount of the underpayment shall be the excess of—

"(A) the required installment, over

"(B) the amount (if any) of the installment paid on or before the due date for the installment.

"(2) PERIOD OF UNDERPAYMENT.—The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier—

"(A) the 15th day of the 3rd month following the close of the taxable year, or

"(B) with respect to any portion of the underpayment, the date on which such portion is paid.

"(3) ORDER OF CREDITING PAYMENTS.—For purposes of paragraph (2)(B), a payment of estimated tax shall be credited against unpaid required installments in the order in

which such installments are required to be paid.

"(c) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this section—

"(1) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each taxable year.

"(2) TIME FOR PAYMENT OF INSTALLMENTS.—

"In the case of the following required installments:	The due date is:
1st	April 15
2nd	June 15
3rd	September 15
4th	December 15

"(d) AMOUNT OF REQUIRED INSTALLMENTS.—For purposes of this section—

"(1) AMOUNT.—

"(A) IN GENERAL.—Except as otherwise provided in this section, the amount of any required installment shall be 25 percent of the required annual payment.

"(B) REQUIRED ANNUAL PAYMENT.—Except as otherwise provided in this subsection, the term 'required annual payment' means the lesser of—

"(i) 90 percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year), or

"(ii) 100 percent of the tax shown on the return of the corporation for the preceding taxable year.

Clause (ii) shall not apply if the preceding taxable year was not a taxable year of 12 months, or the corporation did not file a return for such preceding taxable year showing a liability for tax.

"(2) LARGE CORPORATIONS REQUIRED TO PAY 90 PERCENT OF CURRENT YEAR TAX.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), clause (ii) of paragraph (1)(B) shall not apply in the case of a large corporation.

"(B) MAY USE LAST YEAR'S TAX FOR 1ST INSTALLMENT.—Subparagraph (A) shall not apply for purposes of determining the amount of the 1st required installment for any taxable year. Any reduction in such 1st installment by reason of the preceding sentence shall be recaptured by increasing the amount of the next required installment determined under paragraph (1) by the amount of such reduction.

"(C) SPECIAL RULE FOR TAXABLE YEARS BEGINNING IN 1988.—Subparagraph (A) shall not apply for purposes of determining the amount of the lst and 2nd required installments for any taxable year beginning in 1988. Any reduction in such installments by reason of the preceding sentence shall be recaptured by increasing the amount of the next required installment determined under paragraph (1) by the amount of such reduction.

"(e) LOWER REQUIRED INSTALLMENT WHERE ANNUALIZED INCOME INSTALLMENT OR ADJUSTED SEASONAL INSTALLMENT IS LESS THAN AMOUNT DETERMINED UNDER SUBSECTION (d).—

"(1) IN GENERAL.—In the case of any required installment, if the corporation establishes that the annualized income installment or the adjusted seasonal installment is less than the amount determined under section (d)(1) (as modified by subsection (d)(2))—

"(A) the amount of such required installment shall be the annualized income installment (or, if lesser, the adjusted seasonal installment), and

"(B) any reduction in a required installment resulting from the application of this paragraph shall be recaptured by increasing the amount of the next required installment determined under subsection (d)(1) (as so modified) by the amount of such reduction (and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured under this subparagraph).

"(2) DETERMINATION OF ANNUALIZED INCOME INSTALLMENT.—

"(A) IN GENERAL.—In the case of any required installment, the annualized income installment is the excess (if any) of—

"(i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income, alternative minimum taxable income, and modified alternative minimum taxable income—

"(I) for the first 3 months of the taxable year, in the case of the 1st required installment,

"(II) for the first 3 months or for the first 5 months of the taxable year, in the case of the 2nd required installment,

"(III) for the first 6 months or for the first 8 months of the taxable year in the case of the 3rd required installment, and

"(IV) for the first 9 months or for the first 11 months of the taxable year, in the case of the 4th required installment, over

"(ii) the aggregate amount of any prior required installments for the taxable year.

"(B) SPECIAL RULES.—For purposes of this paragraph—

"(i) ANNUALIZATION.—The taxable income, alternative minimum taxable income, and modified alternative minimum taxable income shall be placed on an annualized basis under regulations prescribed by the Secretary.

"(ii) APPLICABLE PERCENTAGE.—

"In the case of the following required installments:	The applicable percentage is:
1st	22.5
2nd	45
3rd	67.5
4th	90

"(iii) MODIFIED ALTERNATIVE MINIMUM TAXABLE INCOME.—The term 'modified alternative minimum taxable income' has the meaning given to such term by section 59A(b).

"(3) DETERMINATION OF ADJUSTED SEASONAL INSTALLMENT.—

"(A) IN GENERAL.—In the case of any required installment, the amount of the adjusted seasonal installment is the excess (if any) of—

"(i) 90 percent of the amount determined under subparagraph (C), over

"(ii) the aggregate amount of all prior required installments for the taxable year.

"(B) LIMITATION ON APPLICATION OF PARAGRAPH.—This paragraph shall apply only if the base period percentage for any 6 consecutive months of the taxable year equals or exceeds 70 percent.

"(C) DETERMINATION OF AMOUNT.—The amount determined under this subparagraph for any installment shall be determined in the following manner—

"(i) take the taxable income for all months during the taxable year preceding the filing month,

"(ii) divided such amount by the base period percentage for all months during the taxable year preceding the filing month,

"(iii) determine the tax on the amount determined under clause (ii), and

"(iv) multiply the tax computed under clause (iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

"(D) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

"(i) BASE PERIOD PERCENTAGE.—The base period percentage for any period of months shall be the average percent which the taxable income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income for the 3 preceding taxable years.

"(ii) FILING MONTH.—The term 'filing month' means the month in which the installment is required to be paid.

"(iii) REORGANIZATION, ETC.—The Secretary may by regulations provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

"(f) EXCEPTION WHERE TAX IS SMALL AMOUNT.—No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax) is less than $500.

"(g) DEFINITIONS AND SPECIAL RULES.—

"(1) TAX.—For purposes of this section, the term 'tax' means the excess of—

"(A) the sum of—

"(i) the tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever applies,

"(ii) the tax imposed by section 55,

"(iii) the tax imposed by section 59A, plus

"(iv) the tax imposed by section 887, over

"(B) the sum of—

"(i) the credits against tax provided by part IV of subchapter A of chapter 1, plus

"(ii) to the extent allowed under regulations prescribed by the Secretary, any overpayment of the tax imposed by section 4986 (determined without regard to section 4995(a)(4)(B)).

For purposes of the preceding sentence, in the case of a foreign corporation subject to taxation under section 11 or 1201(a), or under subchapter L of chapter 1, the tax imposed by section 881 shall be treated as a tax imposed by section 11.

"(2) LARGE CORPORATION.—

"(A) IN GENERAL.—For purposes of this section, the term 'large corporation' means any corporation if such corporation (or any predecessor corporation) had taxable income of $1,000,000 or more for any taxable year during the testing period.

"(B) RULES FOR APPLYING SUBPARAGRAPH (A).—

"(i) TESTING PERIOD.—For purposes of subparagraph (A), the term 'testing period' means the 3 taxable years immediately preceding the taxable year involved.

"(ii) MEMBERS OF CONTROLLED GROUP.—For purposes of applying subparagraph (A) to any taxable year in the testing period with respect to corporations which are component members of a controlled group of corporations for such taxable year, the $1,000,000 amount specified in subparagraph (A) shall be divided among such members under rules similar to the rules of section 1561.

"(iii) CERTAIN CARRYBACKS AND CARRYOVERS NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (A), taxable income shall be determined without regard to any amount

carried to the taxable year under section 172 or 1212(a).

"(3) CERTAIN TAX-EXEMPT ORGANIZATIONS.—For purposes of this section—

"(A) Any organization subject to the tax imposed by section 511, and any private foundation, shall be treated as a corporation subject to tax under section 11.

"(B) Any tax imposed by section 511, and any tax imposed by section 1 or 4940 on a private foundation, shall be treated as a tax imposed by section 11.

"(C) Any reference to taxable income shall be treated as including a reference to unrelated business taxable income or net investment income (as the case may be).

In the case of any organization described in subparagraph (A), subsection (b)(2)(A) shall be applied by substituting '5th month' for '3rd month'.

"(h) EXCESSIVE ADJUSTMENT UNDER SECTION 6425.—

"(1) ADDITION TO TAX.—If the amount of an adjustment under section 6425 made before the 15th day of the 3rd month following the close of the taxable year is excessive, there shall be added to the tax under chapter 1 for the taxable year an amount determined at the underpayment rate established under section 6621 upon the excessive amount from the date on which the credit is allowed or the refund is paid to such 15th day.

"(2) EXCESSIVE AMOUNT.—For purposes of paragraph (1), the excessive amount is equal to the amount of the adjustment or (if smaller) the amount by which—

"(A) the income tax liability (as defined in section 6425(c)) for the taxable year as shown on the return for the taxable year, exceeds

"(B) the estimated income tax paid during the taxable year, reduced by the amount of the adjustment.

"(i) FISCAL YEARS AND SHORT YEARS.—

"(1) FISCAL YEARS.—In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

"(2) SHORT TAXABLE YEAR.—This section shall be applied to taxable years of less than 12 months in accordance with regulations prescribed by the Secretary.

"(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 6154 of such Code is hereby repealed.

(2) Subparagraph (C) of section 585(c)(3) of such Code is amended by striking out "section 6655(d)(3)" and inserting in lieu thereof "section 6655(e)(2)(A)(i)".

(3) Paragraph (1) of section 6201(b) of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(4) Subsection (c) of section 6425 of such Code is amended by striking out "section 6655(g)" and inserting in lieu thereof "section 6655(h)".

(5) Subsection (h) of section 6601 of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(6) Subsection (e) of section 6651 of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(7) The table of sections for subchapter A of chapter 62 of such Code is amended by striking out the item relating to section 6154.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

SEC. 4512. REVISED WITHHOLDING CERTIFICATES REQUIRED TO BE PUT INTO EFFECT MORE PROMPTLY.

(a) GENERAL RULE.—Subparagraph (B) of section 3402(f)(3) (relating to when certificate takes effect) is amended to read as follows:

"(B) FURNISHED TO TAKE PLACE OF EXISTING CERTIFICATE.—

"(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), a withholding exemption certificate furnished to the employer in cases in which a previous such certificate is in effect shall take effect as of the beginning of the 1st payroll period ending (or the 1st payment of wages made without regard to a payroll period) on or after the 30th day after the day on which such certificate is so furnished.

"(ii) EMPLOYER MAY ELECT EARLIER EFFECTIVE DATE.—At the election of the employer, a certificate described in clause (i) may be made effective beginning with any payment of wages made on or after the day on which the certificate is so furnished and before the 30th day referred to in clause (i).

"(iii) CHANGE OF STATUS WHICH AFFECTS NEXT YEAR.—Any certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to certificates furnished after the day 30 days after the date of the enactment of this Act.

SEC. 4513. ESTIMATED TAX PENALTIES FOR 1987.

(a) DELAY OF INCREASE IN CURRENT YEAR LIABILITY TEST FOR INDIVIDUALS.—Notwithstanding section 1541(c) of the Tax Reform Act of 1986, the amendments made by section 1541 of such Act shall apply only to taxable years beginning after December 31, 1987.

(b) CORPORATE PROVISIONS.—

(1) RATIFICATION OF SECRETARIAL WAIVER.—The Congress hereby ratifies the safe harbor provided by paragraph (b) of the Treasury Temporary Regulation 1.6655-2T

(2) CORPORATIONS ALSO MAY USE 1986 TAX TO DETERMINE AMOUNT OF CERTAIN ESTIMATED TAX INSTALLMENTS DUE ON OR BEFORE JUNE 15, 1987.—

(A) IN GENERAL.—In the case of a large corporation, no addition to tax shall be imposed by section 6655 of the Internal Revenue Code of 1986 with respect to any underpayment of an estimated tax installment to which this subsection applies if no addition would be imposed with respect to such underpayment by reason of section 6655(d)(1) of such Code if such corporation were not a large corporation. The preceding sentence shall apply only to the extent the underpayment is paid on or before the last date prescribed for payment of the most recent installment of estimated tax due on or before September 15, 1987.

(B) INSTALLMENT TO WHICH SUBSECTION APPLIES.—This subsection applies to any installment of estimated tax for a taxable year beginning after December 31, 1986, which is due on or before June 15, 1987.

(C) LARGE CORPORATION.—For purposes of this subsection, the term "large corporation" has the meaning given such term by section 6655(i)(2) of such Code (as in effect on the day before the date of the enactment of this Act).

PART III—CORPORATE PROVISIONS

SEC. 4521. CERTAIN EARNINGS AND PROFITS ADJUSTMENTS NOT TO APPLY FOR CERTAIN PURPOSES.

(a) SPECIAL RULE FOR DETERMINING ADJUSTED BASIS OF STOCK OF MEMBERS OF AFFILIATED GROUP.—

(1) IN GENERAL.—Section 1503 (relating to computation and payment of tax by affiliated group) is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL RULE FOR DETERMINING ADJUSTMENTS TO BASIS.—

"(1) IN GENERAL.—Solely for purposes of determining gain or loss on the disposition of intragroup stock, in determining the adjustments to the basis of such intragroup stock on account of the earnings and profits of any member of an affiliated group for any consolidated year—

"(A) such earnings and profits shall be determined as if section 312 were applied for such taxable year (and all preceding consolidated years of the member with respect to such group) without regard to subsections (k) and (n) thereof (or any corresponding prior provision of law), and

"(B) earnings and profits shall not include any amount excluded from gross income under section 108 to the extent the amount so excluded was not applied to reduce basis of property or other tax attributes.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) INTRAGROUP STOCK.—The term 'intragroup stock' means any stock which—

"(i) is in a corporation which is a member of an affiliated group of corporations, and

"(ii) is held by another member of such group.

"(B) CONSOLIDATED YEAR.—The term 'consolidated year' means any taxable year for which the affiliated group makes a consolidated return."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to any intragroup stock disposed of after October 15, 1987, except that such amendment shall not apply to any intragroup stock disposed of after October 15, 1987, and before January 1, 1989, pursuant to a binding contract in effect on October 16, 1987. For purposes of determining the adjustments to the basis of such stock, such amendment shall be deemed to have been in effect for all periods whether before, on, or after October 16, 1987.

(b) DISTRIBUTIONS RECEIVED BY 20-PERCENT CORPORATE SHAREHOLDERS.—

(1) IN GENERAL.—Paragraph (1) of section 301(e) (relating to special rule for certain distributions received by 20-percent corporate shareholders) is amended by striking out "subsection (n) thereof" and inserting in lieu thereof "subsections (k) and (n) thereof".

(2) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to distributions after October 15, 1987. For purposes of applying such amendment to any such distribution—

(i) for purposes of determining earnings and profits, such amendment shall be deemed to be in effect for all periods whether before, on, or after October 16, 1987, but

(ii) such amendment shall not affect the determination of whether any distribution on or before October 16, 1987, is a dividend and the amount of any reduction in accu-

mulated earnings and profits on account of any such distribution.

(B) BINDING CONTRACT EXCEPTION.—In the case of a disposition of stock after October 15, 1987, and before January 1, 1989, pursuant to a binding contract in effect on October 16, 1987, the amendment made by paragraph (1) shall not apply for purposes of determining gain or loss on such disposition.

SEC. 4522. BENEFITS OF GRADUATED CORPORATE RATES NOT ALLOWED TO PERSONAL SERVICE CORPORATIONS.

(a) GENERAL RULE.—Subsection (b) of section 11 (relating to corporate tax rates) is amended to read as follows:

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be the sum of—

"(A) 15 percent of so much of the taxable income as does not exceed $50,000,

"(B) 25 percent of so much of the taxable income as exceeds $50,000 but does not exceed $75,000, and

"(C) 34 percent of so much of the taxable income as exceeds $75,000.

In the case of a corporation which has taxable income in excess of $100,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (i) 5 percent of such excess, or (ii) $11,750.

"(2) CERTAIN PERSONAL SERVICE CORPORATIONS NOT ELIGIBLE FOR GRADUATED RATES.—Notwithstanding paragraph (1), the amount of the tax imposed by subsection (a) on the taxable income of a qualified personal service corporation (as defined in section 448(d)(2)) shall be equal to 34 percent of the taxable income."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

PART IV—PARTNERSHIP PROVISION

SEC. 4531. TREATMENT OF PUBLICLY TRADED PARTNERSHIPS UNDER SECTION 469.

(a) GENERAL RULE.—Section 469 (relating to passive activity losses and credits limited) is amended by redesignating subsections (k) and (l) as subsections (l) and (m), respectively, and by inserting after subsection (j) the following new subsection:

"(k) SEPARATE APPLICATION OF SECTION IN CASE OF PUBLICLY TRADED PARTNERSHIPS.—

"(1) IN GENERAL.—This section shall be applied separately with respect to items attributable to each publicly traded partnership.

"(2) PUBLICLY TRADED PARTNERSHIP.—For purposes of this section, the term 'publicly traded partnership' means any partnership if—

"(A) interests in such partnership are traded on an established securities market, or

"(B) interests in such partnership are readily tradeable on a secondary market (or the substantial equivalent thereof)."

(b) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study regarding administrative and compliance issues related to the tax treatment of publicly traded partnerships and other large partnerships. The Secretary of the Treasury or his delegate shall not later than January 1, 1989, submit a report on such study to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, together with such recommendations as the Secretary of the Treasury deems appropriate.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 501 of the Tax Reform Act of 1986.

PART V—INCOME TAX PROVISION

SEC. 4541. EXPENSES OF OVERNIGHT CAMPS NOT ALLOWABLE FOR DEPENDENT CARE CREDIT.

(a) GENERAL RULE.—Subparagraph (A) of section 21(b)(2) (defining employment-related expenses) is amended by adding at the end thereof the following new sentence:

"Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenses paid in taxable years beginning after December 31, 1987.

PART VI—PENSION PROVISIONS

Subpart A—Full-Funding Limitations

SEC. 4550. FULL-FUNDING LIMITATION FOR DEDUCTIONS TO QUALIFIED PLANS.

(a) GENERAL RULE.—Paragraph (7) of section 412(c) (defining full-funding limitation) is amended to read as follows:

"(7) FULL-FUNDING LIMITATION.—

"(A) IN GENERAL.—For purposes of paragraph (6), the term 'full-funding limitation' means the excess (if any) of—

"(i) the lesser of (I) 150 percent of current liability, or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(ii) the lesser of—

"(I) the fair market value of the plan's assets, or

"(II) the value of such assets determined under paragraph (2).

"(B) CURRENT LIABILITY.—For purposes of subparagraph (A), the term 'current liability' has the meaning given such term by subsection (l)(7) (without regard to subparagraph (D) thereof).

"(C) SPECIAL RULE FOR PARAGRAPH (6)(B).—For purposes of paragraph (6)(B), subparagraph (A)(i) shall be applied without regard to subclause (I) thereof."

(b) AMENDMENT TO ERISA.—Paragraph (7) of section 302(c) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

"(7) FULL-FUNDING LIMITATION.—

"(A) IN GENERAL.—For purposes of paragraph (6), the term 'full-funding limitation' means the excess (if any) of—

"(i) the lesser of (I) 150 percent of current liability, or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(ii) the lesser of—

"(I) the fair market value of the plan's assets, or

"(II) the value of such assets determined under paragraph (2).

"(B) CURRENT LIABILITY.—For purposes of subparagraph (A), the term 'current liability' has the meaning given such term by subsection (d)(7) (without regard to subparagraph (D) thereof).

"(C) SPECIAL RULE FOR PARAGRAPH (6)(B).—For purposes of paragraph (6)(B), subparagraph (A)(i) shall be applied without regard to subclause (I) thereof."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1987.

Subpart B—Pension Funding Requirements

SEC. 4551. DEFINITIONS.

For purposes of this subpart—

(1) 1986 CODE.—The term "1986 Code" means the Internal Revenue Code of 1986.

(2) ERISA.—The term "ERISA" means the Employee Retirement Income Security Act of 1974.

CHAPTER 1—MODIFICATIONS OF MINIMUM FUNDING STANDARD

SEC. 4552. ADDITIONAL FUNDING REQUIREMENTS.

(a) AMENDMENTS TO 1986 CODE.—

(1) IN GENERAL.—Section 412 of the 1986 Code (relating to minimum funding standard) is amended by adding at the end thereof the following new subsection:

"(l) ADDITIONAL FUNDING REQUIREMENTS FOR PLANS WHICH ARE NOT MULTIEMPLOYER PLANS.—

"(1) IN GENERAL.—In the case of a defined benefit plan (other than a multiemployer plan) which has an unfunded current liability for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—

"(A) the excess (if any) of—

"(i) the deficit reduction contribution determined under paragraph (2) for such plan year, over

"(ii) the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v)), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus

"(B) the unpredictable contingent event amount (if any) for such plan year.

"(2) DEFICIT REDUCTION CONTRIBUTION.—For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—

"(A) the unfunded old liability amount, plus

"(B) the unfunded new liability amount.

"(3) UNFUNDED OLD LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded old liability amount with respect to any plan for any plan year is the amount necessary to amortize the unfunded old liability under the plan in equal annual installments over a period of 15 plan years (beginning with the 1st plan year beginning after December 31, 1988).

"(B) UNFUNDED OLD LIABILITY.—The term 'unfunded old liability' means the unfunded current liability of the plan as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment increasing liabilities adopted after October 16, 1987).

"(C) SPECIAL RULES FOR BENEFIT INCREASES UNDER EXISTING COLLECTIVE BARGAINING AGREEMENTS.—

"(i) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and the employer ratified before October 17, 1987, the unfunded old liability amount with respect to such plan for any plan year shall be increased by the amount necessary to amortize the unfunded existing benefit increase liability in equal annual installments over a period of 15 plan years beginning with—

"(I) the plan year in which the benefit increase with respect to such liability occurs, or

"(II) if the taxpayer elects, the 1st plan year beginning after December 31, 1988.

"(ii) UNFUNDED EXISTING BENEFIT INCREASE LIABILITIES.—For purposes of clause (i), the

unfunded existing benefit increase liability means, with respect to any benefit increase under the agreements described in clause (i) which takes effect during or after the 1st plan year beginning after December 31, 1987, the unfunded current liability determined—

"(I) by taking into account only liabilities attributable to such benefit increase, and

"(II) by reducing the amount determined under paragraph (8)(A)(ii) by the current liability (determined without regard to such benefit increase).

"(iii) EXTENSIONS, MODIFICATIONS, ETC. NOT TAKEN INTO ACCOUNT.—For purposes of this subparagraph, any extension, amendment, or other modification of an agreement after October 16, 1987, shall not be taken into account.

"(4) UNFUNDED NEW LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded new liability amount with respect to any plan for any plan year is the applicable percentage of the unfunded new liability.

"(B) UNFUNDED NEW LIABILITY.—The term 'unfunded new liability' means the unfunded current liability of the plan for the plan year determined without regard to—

"(i) the unamortized portion of the unfunded old liability, and

"(ii) the liability with respect to any unpredictable contingent event benefits (without regard to whether the event has occurred).

"(C) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means, with respect to any plan year, 30 percent, reduced by the product of—

"(i) .25 percent, multiplied by

"(ii) the excess (if any) of the funded current liability percentage over 35 percent.

"(5) UNPREDICTABLE CONTINGENT EVENT AMOUNT.—

"(A) IN GENERAL.—The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the greater of—

"(i) the amount of unpredictable contingent event benefits paid during the plan year, including (except as provided by the Secretary) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits, or

"(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 5 plan years (beginning with the plan year in which such event occurs).

In no event shall the unpredictable contingent event amount exceed the unfunded current liability of the plan for the plan year.

"(B) SPECIAL RULE FOR 1ST YEAR OF AMORTIZATION.—Unless the employer elects otherwise, the amount determined under subparagraph (A) for the plan year in which the event occurs shall be equal to 150 percent of the amount determined under subparagraph (A)(i). The amount under subparagraph (A)(ii) for subsequent plan years in the amortization period shall be adjusted in the manner provided by the Secretary to reflect the application of this subparagraph.

"(C) PARAGRAPH NOT TO APPLY TO EXISTING BENEFITS.—For purposes of this paragraph, unpredictable contingent event benefits (and liabilities attributable thereto) for which the event occurred before October 17, 1987, shall not be taken into account.

"(6) SPECIAL RULES FOR SMALL PLANS.—

"(A) PLANS WITH 100 OR FEWER PARTICIPANTS.—This subsection shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

"(B) PLANS WITH MORE THAN 100 BUT NOT MORE THAN 150 PARTICIPANTS.—In the case of a plan to which subparagraph (A) does not apply and which on each day during the preceding plan year had no more than 150 participants, the amount of the increase under paragraph (1) for such plan year shall be equal to the product of—

"(i) such increase determined without regard to this subparagraph, multiplied by

"(ii) 2 percent for each participant in excess of 100.

"(C) AGGREGATION OF PLANS.—For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

"(7) CURRENT LIABILITY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

"(B) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—

"(i) IN GENERAL.—For purposes of subparagraph (A), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

"(ii) UNPREDICTABLE CONTINGENT EVENT BENEFIT.—The term 'unpredictable contingent event benefit' means any benefit contingent on an event other than—

"(I) age, service, compensation, death, or disability, or

"(II) an event which is reasonably and reliably predictable (as determined by the Secretary).

"(C) INTEREST RATES USED.—

"(i) IN GENERAL.—The rate of interest used under the plan to determine costs shall be used to determine current liability. If such rate is not within the permissible range, the plan shall establish a new rate of interest within the permissible range to determine current liability.

"(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 20 percent above, and not more than 20 percent below, the average Federal mid-term rate (within the meaning of section 1274(d)) for the 3-year period ending on the last day before the beginning of the plan year (or, if shorter, the period for which a Federal mid-term rate was prescribed).

"(II) SECRETARIAL AUTHORITY TO PRESCRIBE SAFE HARBOR RATES.—The Secretary may prescribe 1 or more indices for determining a rate of interest to be used in lieu of the average Federal mid-term rate for purposes of subclause (I).

"(D) CERTAIN SERVICE DISREGARDED.—

"(i) IN GENERAL.—In the case of a participant to whom this subparagraph applies, unless the employer elects otherwise, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

"(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the applicable percentage shall be determined as follows:

If the years of participation are:	The applicable percentage is:
5 or less	0
6	20
7	40
8	60
9	80
10 or more	100

"(iii) PARTICIPANTS TO WHOM SUBPARAGRAPH APPLIES.—This subparagraph shall apply to any participant who, at the time of becoming a participant—

"(I) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member, and

"(II) has years of service before such time in excess of the years of service required for eligibility to participate in the plan.

"(8) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) UNFUNDED CURRENT LIABILITY.—The term 'unfunded current liability' means, with respect to any plan year, the excess (if any) of—

"(i) the current liability under the plan, over

"(ii) value of the plan's assets determined under subsection (c)(2) reduced by any credit balance in the funding standard account.

"(B) FUNDED CURRENT LIABILITY PERCENTAGE.—The term 'funded current liability percentage' means, with respect to any plan year, the percentage which—

"(i) the amount determined under subparagraph (A)(ii), is of

"(ii) the current liability under the plan.

"(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), and (o) of section 414.

"(D) ADJUSTMENTS TO PREVENT OMISSIONS AND DUPLICATIONS.—The Secretary shall provide such adjustments in the unfunded old liability amount, the unfunded new liability amount, the unpredictable contingent event amount, and any other charges or credits under this section as are necessary to avoid duplication or omission of any factors in the determination of such amounts, charges, or credits."

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 412(b) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For additional requirements in the case of plans other than multiemployer plans, see subsection (l)."

(b) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Section 302 of ERISA is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) ADDITIONAL FUNDING REQUIREMENTS FOR PLANS WHICH ARE NOT MULTIEMPLOYER PLANS.—

"(1) IN GENERAL.—In the case of a defined benefit plan (other than a multiemployer plan) which has an unfunded current liability for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—

"(A) the excess (if any) of—

"(i) the deficit reduction contribution determined under paragraph (2) for such plan year, over

"(ii) the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v)), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus

"(B) the unpredictable contingent event amount (if any) for such plan year.

"(2) DEFICIT REDUCTION CONTRIBUTION.—For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—

"(A) the unfunded old liability amount, plus

"(B) the unfunded new liability amount.

"(3) UNFUNDED OLD LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded old liability amount with respect to any plan for any plan year is the amount necessary to amortize the unfunded old liability under the plan in equal annual installments over a period of 15 plan years (beginning with the 1st plan year beginning after December 31, 1988).

"(B) UNFUNDED OLD LIABILITY.—The term 'unfunded old liability' means the unfunded current liability of the plan as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment increasing liabilities adopted after October 16, 1987).

"(C) SPECIAL RULES FOR BENEFIT INCREASES UNDER EXISTING COLLECTIVE BARGAINING AGREEMENTS.—

"(i) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and the employer ratified before October 17, 1987, the unfunded old liability amount with respect to such plan for any plan year shall be increased by the amount necessary to amortize the unfunded existing benefit increase liability in equal annual installments over a period of 15 plan years beginning with—

"(I) the plan year in which the benefit increase with respect to such liability occurs, or

"(II) if the taxpayer elects, the 1st plan year beginning after December 31, 1988.

"(ii) UNFUNDED EXISTING BENEFIT INCREASE LIABILITIES.—For purposes of clause (i), the unfunded existing benefit increase liability means, with respect to any benefit increase under the agreements described in clause (i) which takes effect during or after the 1st plan year beginning after December 31, 1987, the unfunded current liability determined—

"(I) by taking into account only liabilities attributable to such benefit increase, and

"(II) by reducing the amount determined under paragraph (8)(A)(ii) by the current liability (determined without regard to such benefit increase).

"(iii) EXTENSIONS, MODIFICATIONS, ETC. NOT TAKEN INTO ACCOUNT.—For purposes of this subparagraph, any extension, amendment, or other modification of an agreement after October 16, 1987, shall not be taken into account.

"(4) UNFUNDED NEW LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded new liability amount with respect to any plan for any plan year is the applicable percentage of the unfunded new liability.

"(B) UNFUNDED NEW LIABILITY.—The term 'unfunded new liability' means the unfunded current liability of the plan for the plan year determined without regard to—

"(i) the unamortized portion of the unfunded old liability, and

"(ii) the liability with respect to any unpredictable contingent event benefits (without regard to whether the event has occurred).

"(C) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means, with respect to any plan year, 30 percent, reduced by the product of—

"(i) .25 percent, multiplied by

"(ii) the excess (if any) of the funded current liability percentage over 35 percent.

"(5) UNPREDICTABLE CONTINGENT EVENT AMOUNT.—

"(A) IN GENERAL.—The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the greater of—

"(i) the amount of unpredictable contingent event benefits paid during the plan year, (except as provided by the Secretary of the Treasury) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits, or

"(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 5 plan years (beginning with the plan year in which such event occurs).

In no event shall the unpredictable contingent event amount exceed the unfunded current liability of the plan for the plan year.

"(B) SPECIAL RULE FOR 1ST YEAR OF AMORTIZATION.—Unless the employer elects otherwise, the amount determined under subparagraph (A) for the plan year in which the event occurs shall be equal to 150 percent of the amount determined under subparagraph (A)(i). The amount under subparagraph (A)(ii) for subsequent plan years in the amortization period shall be adjusted in the manner provided by the Secretary to reflect the application of this subparagraph.

"(C) PARAGRAPH NOT TO APPLY TO EXISTING BENEFITS.—For purposes of this paragraph, unpredictable contingent event benefits (and liabilities attributable thereto) for which the event occurred before October 17, 1987, shall not be taken into account.

"(6) SPECIAL RULES FOR SMALL PLANS.—

"(A) PLANS WITH 100 OR FEWER PARTICIPANTS.—This subsection shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

"(B) PLANS WITH MORE THAN 100 BUT NO MORE THAN 150 PARTICIPANTS.—In the case of a plan to which subparagraph (A) does not apply and which on each day during the preceding plan year had no more than 150 participants, the amount of the increase under paragraph (1) for such plan year shall be equal to the product of—

"(i) such increase determined without regard to this subparagraph, multiplied by

"(ii) 2 percent for each participant in excess of 100.

"(C) AGGREGATION OF PLANS.—For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

"(7) CURRENT LIABILITY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

"(B) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—

"(i) IN GENERAL.—For purposes of subparagraph (A), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

"(ii) UNPREDICTABLE CONTINGENT EVENT BENEFIT.—The term 'unpredictable contingent event benefit' means any benefit contingent on an event other than—

"(I) age, service, compensation, death, or disability, or

"(II) an event which is reasonably and reliably predictable (as determined by the Secretary).

"(C) INTEREST RATES USED.—

"(i) IN GENERAL.—The rate of interest used under the plan to determine costs shall be used to determine current liability. If such rate is not within the permissible range, the plan shall establish a new rate of interest within the permissible range to determine current liability.

"(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 20 percent above, and not more than 20 percent below, the average Federal mid-term rate (within the meaning of section 1274(d)) for the 3-year period ending on the last day before the beginning of the plan year (or, if shorter, the period for which a Federal mid-term rate was prescribed).

"(II) SECRETARIAL AUTHORITY TO PRESCRIBE SAFE HARBOR RATES.—The Secretary may prescribe 1 or more indices for determining a rate of interest to be used in lieu of the average Federal mid-term rate for purposes of subclause (I).

"(D) CERTAIN SERVICE DISREGARDED.—

"(i) IN GENERAL.—In the case of a participant to whom this subparagraph applies, unless the employer elects otherwise, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

"(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the applicable percentage shall be determined as follows:

If the years of participation are:	The applicable percentage is:
5 or less	0
6	20
7	40
8	60
9	80
10 or more	100

"(iii) PARTICIPANTS TO WHOM SUBPARAGRAPH APPLIES.—This subparagraph shall apply to any participant who, at the time of becoming a participant—

"(I) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member, and

"(II) has years of service before such time in excess of the years of service required for eligibility to participate in the plan.

"(8) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) UNFUNDED CURRENT LIABILITY.—The term 'unfunded current liability' means, with respect to any plan year, the excess (if any) of—

"(i) the current liability under the plan, over

"(ii) value of the plan's assets determined under subsection (c)(2) reduced by any credit balance in the funding standard account.

"(B) FUNDED CURRENT LIABILITY PERCENTAGE.—The term 'funded current liability percentage' means, with respect to any plan year, the percentage which—

"(i) the amount determined under subparagraph (A)(ii), is of

"(ii) the current liability under the plan.

"(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), and (o) of section 414.

"(D) ADJUSTMENTS TO PREVENT OMISSIONS AND DUPLICATIONS.—The Secretary shall provide such adjustments in the unfunded old liability amount, the unfunded new liability amount, the unpredictable contingent event amount, and any other charges or credits under this section as are necessary to avoid duplication or omission of any factors in the determination of such amounts, charges, or credits."

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 412(b) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For additional requirements in the case of plans other than multiemployer plans, see subsection (l)."

(b) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Section 302 of ERISA is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) ADDITIONAL FUNDING REQUIREMENTS FOR PLANS WHICH ARE NOT MULTIEMPLOYER PLANS.—

"(1) IN GENERAL.—In the case of a defined benefit plan (other than a multiemployer plan) which has an unfunded current liability for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—

"(A) the excess (if any) of—

"(i) the deficit reduction contribution determined under paragraph (2) for such plan year, over

"(ii) the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v)), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus

"(B) the unpredictable contingent event amount (if any) for such plan year.

"(2) DEFICIT REDUCTION CONTRIBUTION.—For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—

"(A) the unfunded old liability amount, plus

"(B) the unfunded new liability amount.

"(3) UNFUNDED OLD LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded old liability amount with respect to any plan for any plan year is the amount necessary to amortize the unfunded old liability under the plan in equal annual installments over a period of 15 plan years (beginning with the 1st plan year beginning after December 31, 1988).

"(B) UNFUNDED OLD LIABILITY.—The term 'unfunded old liability' means the unfunded current liability of the plan as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment increasing liabilities adopted after October 16, 1987).

"(C) SPECIAL RULES FOR BENEFIT INCREASES UNDER EXISTING COLLECTIVE BARGAINING AGREEMENTS.—

"(i) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and the employer ratified before October 17, 1987, the unfunded old liability amount with respect to such plan for any plan year shall be increased by the amount necessary to amortize the unfunded existing benefit increase liability in equal annual installments over a period of 15 plan years beginning with—

"(I) the plan year in which the benefit increase with respect to such liability occurs, or

"(II) if the taxpayer elects, the 1st plan year beginning after December 31, 1988.

"(ii) UNFUNDED EXISTING BENEFIT INCREASE LIABILITIES.—For purposes of clause (i), the unfunded existing benefit increase liability means, with respect to any benefit increase under the agreements described in clause (i) which takes effect during or after the 1st plan year beginning after December 31, 1987, the unfunded current liability determined—

"(I) by taking into account only liabilities attributable to such benefit increase, and

"(II) by reducing the amount determined under paragraph (8)(A)(ii) by the current liability (determined without regard to such benefit increase).

"(iii) EXTENSIONS, MODIFICATIONS, ETC. NOT TAKEN INTO ACCOUNT.—For purposes of this subparagraph, any extension, amendment, or other modification of an agreement after October 16, 1987, shall not be taken into account.

"(4) UNFUNDED NEW LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded new liability amount with respect to any plan for any plan year is the applicable percentage of the unfunded new liability.

"(B) UNFUNDED NEW LIABILITY.—The term 'unfunded new liability' means the unfunded current liability of the plan for the plan year determined without regard to—

"(i) the unamortized portion of the unfunded old liability, and

"(ii) the liability with respect to any unpredictable contingent event benefits (without regard to whether the event has occurred).

"(C) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means, with respect to any plan year, 30 percent, reduced by the product of—

"(i) .25 percent, multiplied by

"(ii) the excess (if any) of the funded current liability percentage over 35 percent.

"(5) UNPREDICTABLE CONTINGENT EVENT AMOUNT.—

"(A) IN GENERAL.—The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the excess (if any) of—

"(i) the amount of unpredictable contingent event benefits paid during the plan year, (except as provided by the Secretary of the Treasury) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits, over

"(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 5 plan years (beginning with the plan year in which such event occurs).

In no event shall the unpredictable contingent event amount exceed the unfunded current liability of the plan for the plan year.

"(B) SPECIAL RULE FOR 1ST YEAR OF AMORTIZATION.—Unless the employer elects otherwise, the amount determined under subparagraph (A) for the plan year in which the event occurs shall be equal to 150 percent of the amount determined under subparagraph (A)(i). The amount under subparagraph (A)(ii) for subsequent plan years in the amortization period shall be adjusted in the manner provided by the Secretary to reflect the application of this subparagraph.

"(C) PARAGRAPH NOT TO APPLY TO EXISTING BENEFITS.—For purposes of this paragraph, unpredictable contingent event benefits (and liabilities attributable thereto) for which the event occurred before October 17, 1987, shall not be taken into account.

"(6) SPECIAL RULES FOR SMALL PLANS.—

"(A) PLANS WITH 100 OR FEWER PARTICIPANTS.—This subsection shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

"(B) PLANS WITH MORE THAN 100 BUT NO MORE THAN 150 PARTICIPANTS.—In the case of a plan to which subparagraph (A) does not apply and which on each day during the preceding plan year had no more than 150 participants, the amount of the increase under paragraph (1) for such plan year shall be equal to the product of—

"(i) such increase determined without regard to this subparagraph, multiplied by

"(ii) 2 percent for each participant in excess of 100.

"(C) AGGREGATION OF PLANS.—For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

"(7) CURRENT LIABILITY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

"(B) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—

"(i) IN GENERAL.—For purposes of subparagraph (A), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

"(ii) UNPREDICTABLE CONTINGENT EVENT BENEFIT.—The term 'unpredictable contingent event benefit' means any benefit contingent on an event other than—

"(I) age, service, compensation, death, or disability, or

"(II) an event which is reasonably and reliably predictable (as determined by the Secretary).

"(C) INTEREST RATES USED.—

"(i) IN GENERAL.—The rate of interest used under the plan to determine costs shall be used to determine current liability. If such rate is not within the permissible range, the plan shall establish a new rate of interest within the permissible range to determine current liability.

"(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 20 percent above, and not more than 20 percent below, the average Federal mid-term rate (within the meaning of section 1274(d) of the Internal Revenue Code of 1986) for the 3-year period ending on the last day before the beginning of the plan year (or, if shorter, the period for which a Federal mid-term rate was prescribed).

"(II) SECRETARIAL AUTHORITY TO PRESCRIBE SAFE HARBOR RATES.—The Secretary of the Treasury may prescribe 1 or more indices for determining a rate of interest to be used in lieu of the average Federal mid-term rate for purposes of subclause (I).

"(D) CERTAIN SERVICE DISREGARDED.—

"(i) IN GENERAL.—In the case of a participant to whom this subparagraph applies,

unless the employer elects otherwise, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

"(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the applicable percentage shall be determined as follows:

If the years of participation are:	The applicable percentage is:
5 or less	0
6	20
7	40
8	60
9	80
10 or more	100

"(iii) PARTICIPANTS TO WHOM SUBPARAGRAPH APPLIES.—This subparagraph shall apply to any participant who, at the time of becoming a participant—

"(I) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member, and

"(II) has years of service before such time in excess of the years of service required for eligibility to participate in the plan.

"(8) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) UNFUNDED CURRENT LIABILITY.—The term 'unfunded current liability' means, with respect to any plan year, the excess (if any) of—

"(i) the current liability under the plan, over

"(ii) value of the plan's assets determined under subsection (c)(2) reduced by any credit balance in the funding standard account.

"(B) FUNDED CURRENT LIABILITY PERCENTAGE.—The term 'funded current liability percentage' means, with respect to any plan year, the percentage which—

"(i) the amount determined under subparagraph (A)(ii), is of

"(ii) the current liability under the plan.

"(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986.

"(D) ADJUSTMENTS TO PREVENT OMISSIONS AND DUPLICATIONS.—The Secretary of the Treasury shall provide such adjustments in the unfunded old liability amount, the unfunded new liability amount, the unpredictable contingent event amount, and any other charges or credits under this section as are necessary to avoid duplication or omission of any factors in the determination of such amounts, charges, or credits."

(c) REVISION OF VALUATION REGULATIONS.—Effective with respect to plan years beginning after December 31, 1987, the provisions of the regulations prescribed under section 412(c)(2) of the 1986 Code which permit asset valuations to be based on a range between 85 percent and 115 percent of average value shall have no force and effect with respect to plans other than multiemployer plans (as defined in section 414(f) of the 1986 Code). The Secretary of the Treasury or his delegate shall amend such regulations to carry out the purposes of the preceding sentence.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 1987.

SEC. 4553. TIME FOR MAKING CONTRIBUTIONS.

(a) PERIOD DURING WHICH CONTRIBUTIONS MAY BE MADE AFTER CLOSE OF YEAR.—

(1) AMENDMENT TO 1986 CODE.—Paragraph (10) of section 412(c) of the 1986 Code (relating to time when certain contributions deemed made) is amended to read as follows:

"(10) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section—

"(A) PLANS OTHER THAN MULTIEMPLOYER PLANS.—In the case of a plan other than a multiemployer plan, any contributions for a plan year made by an employer during the period—

"(i) beginning on the day after the last day of such plan year, and

"(ii) ending on the date which is 8½ months after the close of the plan year,

shall be deemed to have been made on such last day.

"(B) MULTIEMPLOYER PLANS.—In the case of a multiemployer plan, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this paragraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary."

(2) AMENDMENT TO ERISA.—Paragraph (10) of section 302(c) of ERISA (relating to time when certain contributions deemed made) is amended to read as follows:

"(10) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section—

"(A) PLANS OTHER THAN MULTIEMPLOYER PLANS.—In the case of a plan other than a multiemployer plan, any contributions for a plan year made by an employer during the period—

"(i) beginning on the day after the last day of such plan year, and

"(ii) ending on the date which is 8½ months after the close of the plan year,

shall be deemed to have been made on such last day.

"(B) MULTIEMPLOYER PLANS.—In the case of a multiemployer plan, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this paragraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after December 31, 1987.

(b) QUARTERLY ESTIMATED PAYMENTS REQUIRED.—

(1) AMENDMENT TO 1986 CODE.—Section 412 of the 1986 Code (relating to minimum funding standard) is amended by adding at the end thereof the following new subsection:

"(m) QUARTERLY CONTRIBUTIONS REQUIRED.—

"(1) IN GENERAL.—If a plan (other than a multiemployer plan) fails to pay the full amount of a required installment for any plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

"(A) 175 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

"(B) the rate under subsection (b)(5).

"(2) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of paragraph (1)—

"(A) AMOUNT.—The amount of the underpayment shall be the excess of—

"(i) the required installment, over

"(ii) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

"(B) PERIOD OF UNDERPAYMENT.—The period for which interest is charged under this subsection shall run from the due date for the installment to whichever of the following dates is the earlier—

"(i) the date which is 8½ months after the close of the plan year, or

"(ii) with respect to any portion of the underpayment, the date on which such portion is contributed to or under the plan.

"(C) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of subparagraph (B)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(3) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this subsection—

"(A) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

"(B) TIME FOR PAYMENT OF INSTALLMENTS.—

In the case of the following required installments:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the following year

"(4) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The amount of any required installment shall be the applicable percentage of the required annual payment.

"(B) REQUIRED ANNUAL PAYMENT.—For purposes of subparagraph (A), the term 'required annual payment' means the lesser of—

"(i) 90 percent of the amount required to be contributed to or under the plan by the employer for the plan year by reason of section 412, or

"(ii) 100 percent of the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

"(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

For plan years beginning in:	The applicable percentage is:
1988	5
1989	10
1990	15
1991	20
1992 and thereafter	25

"(D) SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.—In the case of a plan with any unpredictable contingent event benefit liabilities—

"(i) such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B), and

"(ii) each required installment shall be increased by the greater of—

"(I) the amount of benefits described in subsection (l)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

"(II) 25 percent of the amount determined under subsection (l)(5)(A)(ii) for the plan year.

"(5) FISCAL YEARS AND SHORT YEARS.—

"(A) FISCAL YEARS.—In applying this subsection to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this subsection, the months which correspond thereto.

"(B) SHORT PLAN YEAR.—This subsection shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary."

(2) AMENDMENT TO ERISA.—Section 302 of ERISA is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) QUARTERLY CONTRIBUTIONS REQUIRED.—

"(1) IN GENERAL.—If a plan (other than a multiemployer plan) fails to pay the full amount of a required installment for any plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

"(A) 175 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

"(B) the rate under subsection (b)(5).

"(2) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of paragraph (1)—

"(A) AMOUNT.—The amount of the underpayment shall be the excess of—

"(i) the required installment, over

"(ii) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

"(B) PERIOD OF UNDERPAYMENT.—The period for which any interest is charged under this subsection shall run from the due date for the installment to whichever of the following dates is the earlier—

"(i) the date which is 8½ months after the close of the plan year, or

"(ii) with respect to any portion of the underpayment, the date on which such portion is contributed to or under the plan.

"(C) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of subparagraph (B)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(3) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this subsection—

"(A) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

"(B) TIME FOR PAYMENT OF INSTALLMENTS.—

In the case of the following required installments:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the following year

"(4) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The amount of any required installment shall be the applicable percentage of the required annual payment.

"(B) REQUIRED ANNUAL PAYMENT.—For purposes of subparagraph (A), the term 'required annual payment' means the lesser of—

"(i) 90 percent of the amount required to be contributed to or under the plan by the employer for the plan year by reason of section 412, or

"(ii) 100 percent of the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

"(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

For plan years beginning in:	The applicable percentage is:
1988	5
1989	10
1990	15
1991	20
1992 and thereafter	25

"(D) SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.—In the case of a plan with any unpredictable contingent event benefit liabilities—

"(i) such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B), and

"(ii) each required installment shall be increased by the greater of—

"(I) the amount of benefits described in subsection (d)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

"(II) 25 percent of the amount determined under subsection (d)(5)(A)(ii) for the plan year.

"(5) FISCAL YEARS AND SHORT YEARS.—

"(A) FISCAL YEARS.—In applying this subsection to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this subsection, the months which correspond thereto.

"(B) SHORT PLAN YEAR.—This section shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to plan years beginning after 1987.

(c) INCREASE IN PENALTY FROM 5 PERCENT TO 10 PERCENT.—

(1) IN GENERAL.—Section 4971(a) of the 1986 Code (relating to initial tax on failure to meet minimum funding standards) is amended by striking out "5 percent" and inserting in lieu thereof "10 percent (5 percent in the case of a multiemployer plan)".

(2) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after 1987.

(d) REQUIREMENT OF NOTICE.—Section 101 of ERISA (relating to duty of disclosure and reporting) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) NOTICE OF FAILURE TO MEET MINIMUM FUNDING STANDARDS.—

"(1) IN GENERAL.—If an employer of a plan other than a multiemployer plan fails to make a required installment or other payment required to meet the minimum funding standard under section 302 to a plan before the 60th day following the due date for such installment or other payment, the employer shall notify each participant and beneficiary of such plan of such failure. Such notice shall be made at such time and in such manner as the Secretary may prescribe.

"(2) SECTION NOT TO APPLY IF WAIVER PENDING.—This section shall not apply to any failure if the employer has filed a waiver request with respect to the required installment under section 303, except that if the waiver request is denied, notice under paragraph (1) shall be provided within 60 days after the date of such denial.

"(3) DEFINITIONS.—For purposes of this subsection, the terms 'required installment' and 'due date' have the same meanings given such terms by section 302(e)."

(e) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

(1) IN GENERAL.—Subtitle A of title IV of ERISA (relating to Pension Benefit Guaranty Corporation) is amended by adding at the end thereof the following new section:

"IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS

"SEC. 4010. (a) IN GENERAL.—If any person in connection with a plan other than a multiemployer plan fails—

"(1) to make a required installment on or before the due date for such installment, or

"(2) to make any other payment required to meet the minimum funding standard under section 302,

there shall be a lien in favor of the plan in the unpaid amount of such installment or payment (including interest) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

"(b) NOTICE OF FAILURE; LIEN.—

"(1) NOTICE OF FAILURE.—A person committing a failure described in subsection (a) shall notify the corporation of such failure within 10 days of the due date for the required installment or the date the payment described in subsection (a)(2) is required to be made.

"(2) PERIOD OF LIEN.—

"(A) IN GENERAL.—The lien imposed by subsection (a) shall arise on the 30th day following the due date for the required installment or the date the payment described in subsection (a)(2) is required to be made and shall continue until the full payment of such installment or payment (including interest).

"(B) WAIVER REQUESTS.—No lien shall arise with respect to a required installment—

"(i) for which a waiver request is granted under section 303, or

"(ii) for which a waiver request is pending under section 303.

If a waiver request is denied, the lien shall arise on the day after such request is denied.

"(3) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under subsection (a) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

"(c) ENFORCEMENT.—Any lien created under subsection (a) may be perfected and enforced only by the corporation, or at the direction of the corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

"(d) DEFINITIONS.—For purposes of this section—

"(1) DUE DATE; REQUIRED INSTALLMENT.—The terms 'due date' and 'required installment' have the meanings given such terms by section 302(e)."

"(2) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986."

(3) CLERICAL AMENDMENT.—The table of contents for ERISA is amended by inserting after the item relating to section 4009 the following new item:

"Sec. 4010. Imposition of lien where failure to make required contributions."

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after December 31, 1987.

SEC. 4554. LIABILITY OF MEMBERS OF CONTROLLED GROUP FOR TAXES ON FAILURE TO MEET MINIMUM FUNDING STANDARDS.

(a) GENERAL RULE.—Section 4971 of the 1986 Code (relating to taxes on failure to meet minimum funding standards) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) LIABILITY FOR TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the tax imposed by subsection (a) or (b) shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).

"(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—In the case of a plan other than a multiemployer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for the tax imposed by subsection (a) or (b).

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(b) TECHNICAL AMENDMENTS.—

(1) Subsection (a) of section 4971 of the 1986 Code is amended by striking out the last sentence.

(2) Subsection (b) of section 4971 of the 1986 Code is amended by striking out the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 1987.

SEC. 4555. FUNDING WAIVERS.

(a) REQUIREMENTS FOR WAIVERS.—

(1) AMENDMENTS TO 1986 CODE.—

(A) APPLICATION MUST BE SUBMITTED BEFORE DUE DATE OF INSTALLMENT.—Subsection (d) of section 412 of the 1986 Code (relating to variance from minimum funding standard) is amended by adding at the end thereof the following new paragraph:

"(4) APPLICATION MUST BE SUBMITTED BEFORE DUE DATE.—In the case of a plan other than a multiemployer plan, no waiver may be granted under this subsection with respect to any required installment under subsection (m) or other payment required to meet the minimum funding standard of this section unless an application therefor is submitted to the Secretary not later than the due date for such installment or payment. Any application under this paragraph may include more than 1 required installment or payment for any plan year."

(B) WAIVER ALLOWED ONLY FOR TEMPORARY HARDSHIP.—Subsection (d) of section 412 of the 1986 Code is amended—

(i) by striking out "substantial business hardship" in paragraphs (1) and (2) and inserting in lieu thereof "substantial temporary business hardship (substantial business hardship in the case of a multiemployer plan)", and

(ii) by striking out "SUBSTANTIAL" in the headings of paragraphs (1) and (2).

(C) HARDSHIP MUST ALSO EXIST AT CONTROLLED GROUP LEVEL.—Subsection (d) of section 412 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—In the case of a plan other than a multiemployer plan, if an employer is a member of a controlled group, the substantial temporary business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

"(i) with respect to such employer, and

"(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(2) AMENDMENTS TO ERISA.—

(A) APPLICATION MUST BE SUBMITTED BEFORE DUE DATE.—Section 303 of ERISA (relating to variance from minimum funding standard) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) SPECIAL RULES.—

"(1) APPLICATION MUST BE SUBMITTED BEFORE DUE DATE.—In the case of a plan other than a multiemployer plan, no waiver may be granted under this section with respect to any required installment under section 302(e) or other payment required to meet the minimum funding standard of section 302 unless an application therefor is submitted to the Secretary of the Treasury not later than the due date for such installment or payment. Any application under this paragraph may include more than 1 required installment or payment for any plan year."

(B) WAIVER ALLOWED ONLY FOR TEMPORARY HARDSHIP.—Section 303 of ERISA is amended by striking out "substantial business hardship" in subsections (a) and (b) and inserting in lieu thereof "substantial temporary business hardship (substantial business hardship in the case of a multiemployer plan)".

(C) HARDSHIP MUST ALSO EXIST AT CONTROLLED GROUP LEVEL.—Subsection (d) of section 303 of ERISA (as amended by subparagraph (A)) is amended by adding at the end thereof the following new paragraph:

"(2) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—In the case of a plan other than a multiemployer plan, if an employer is a member of a controlled group, the substantial temporary business hardship requirements of subsection (a) shall be treated as met only if such requirements are met—

"(i) with respect to such employer, and

"(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986."

(b) FREQUENCY OF WAIVERS.—

(1) AMENDMENTS TO 1986 CODE.—The second sentence of section 412(d) of the 1986 Code is amended by striking out "more than 5 of any 15" and inserting in lieu thereof "more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan)".

(2) AMENDMENTS TO ERISA.—The second sentence of section 303(a) of ERISA is amended by striking out "more than 5 of any 15" and inserting in lieu thereof "more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan)".

(c) INTEREST ON REPAYMENT OF WAIVED CONTRIBUTIONS.—

(1) AMENDMENTS TO 1986 CODE.—

(A) Paragraph (1) of section 412(d) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "In the case of a plan other than a multiemployer plan, the interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) for any plan year shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs."

(B) Subsection (e) of section 412 of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "In the case of a plan other than a multiemployer plan, the interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs."

(2) AMENDMENTS TO ERISA.—

(A) Subsection (a) of section 303 of ERISA is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "In the case of a plan other than a multiemployer plan, the interest rate used for purposes of computing the amortization charge described in section 302(b) for any plan year shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs."

(B) Subsection (a) of section 304 of ERISA is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "In the case of a plan other than a multiemployer plan, the interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs."

(d) No WAIVERS FOR PLANS WITH UNFUNDED CURRENT LIABILITY.—

(1) AMENDMENT OF 1986 CODE.—Section 412(d)(1) of the 1986 Code is amended by adding at the end thereof the following new sentence: "The Secretary shall not waive the minimum funding standard for any plan year for which a plan (other than a multiemployer plan) has an unfunded current liability (within the meaning of subsection (l)(8)(A))."

(2) AMENDMENT OF ERISA.—Section 303(a) of ERISA is amended by adding at the end thereof the following new sentence: "The Secretary of the Treasury shall not waive the minimum funding standard for any plan

year for which a plan (other than a multiemployer plan) has an unfunded current liability (within the meaning of section 302(d)(8)(A))."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to any application submitted for any plan year beginning after December 31, 1987.

SEC. 4556. OTHER FUNDING CHANGES.

(a) AMORTIZATION PERIODS.—

(1) AMENDMENTS TO 1986 CODE.—

(A) Paragraphs (2)(B)(iv) and (3)(B)(ii) of section 412(b) of the 1986 Code are each amended by striking out "15 plan years" and inserting in lieu thereof "5 plan years (15 plan years in the case of a multiemployer plan)".

(B) Paragraphs (2)(B)(v) and (3)(B)(iii) of section 412(b) of the 1986 Code are each amended by striking out "30 plan years" and inserting in lieu thereof "5 plan years (30 plan years in the case of a multiemployer plan)".

(2) AMENDMENTS TO ERISA.—

(A) Paragraphs (2)(B)(iv) and (3)(B)(ii) of section 302(b) of ERISA are each amended by striking out "15 plan years" and inserting in lieu thereof "5 plan years (15 plan years in the case of a multiemployer plan)".

(B) Paragraphs (2)(B)(v) and (3)(B)(iii) of section 302(b) of ERISA are each amended by striking out "30 plan years" and inserting in lieu thereof "5 plan years (30 plan years in the case of a multiemployer plan)".

(b) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—

(1) AMENDMENT TO 1986 CODE.—Paragraph (3) of section 412(c) of the 1986 Code is amended to read as follows:

"(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

"(A) in the case of—

"(i) a plan other than a multiemployer plan, each of which is reasonable (taking into account the experience of the plan and reasonable expectations) or which, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption and method were reasonable, or

"(ii) a multiemployer plan, which, in the aggregate, are reasonable (taking into account the experiences of the plan and reasonable expectations), and

"(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan."

(c) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS TO CERTAIN PLANS NOT LESS THAN UNFUNDED CURRENT LIABILITY.—Paragraph (1) of section 404(a) of the 1986 Code is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) SPECIAL RULE IN CASE OF CERTAIN PLANS.—In the case of any defined benefit plan (other than a multiemployer plan) which has more than 100 participants for the plan year, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability determined under section 412(l). For purposes of this subparagraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(l)(8)(c))) shall be treated as 1 plan, but only employees of such member or employer shall be taken into account."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1987.

CHAPTER 2—TREATMENT OF PLAN TERMINATIONS

SEC. 4557. STANDARD TERMINATION PROCEDURES AVAILABLE ONLY WHEN ASSETS SUFFICIENT TO MEET TERMINATION LIABILITY.

(a) GENERAL RULE.—Subparagraph (D) of section 4041(b)(1) of ERISA is amended to read as follows:

"(D) when the final distribution of assets occurs, the plan is sufficient for termination liability (determined as of the termination date)."

(b) TECHNICAL AMENDMENTS.—

(1) Paragraphs (2)(A), (2)(C), (2)(D), and (3) of section 4041(b) of ERISA are each amended by striking out "benefit commitments" each place it appears and inserting in lieu thereof "termination liability".

(2) Subparagraph (B) of section 4041(b)(2) of ERISA is amended—

(A) by striking out "the amount of such person's benefit commitments (if any)" and inserting in lieu thereof "the amount of the termination liability (if any) attributable to such person", and

(B) by striking out "such benefit commitments" and inserting in lieu thereof "such termination liability".

(3)(A) Subparagraph (A) of section 4041(b)(3) of ERISA is amended by striking out clauses (i) and (ii) and inserting in lieu thereof the following:

"(i) purchase irrevocable commitments from an insurer to provide all benefits under the plan, or

"(ii) in accordance with the provisions of the plan and any applicable regulations, otherwise fully provide all benefits under the plan."

(B) Subparagraph (B) of section 4041(b)(3) of ERISA is amended by striking out "so as to pay" and all that follows and inserting in lieu thereof "so as to pay all benefits under the plan".

(4) Paragraphs (2) and (3) of section 4041(c) of ERISA are each amended by striking out "benefit commitments" each place it appears (including in any heading) and inserting in lieu thereof "termination liability".

(5) Paragraph (1) of section 4041(d) of ERISA is amended—

(A) by striking out "no amount of unfunded benefit commitments" and inserting in lieu thereof "no unfunded termination liability", and

(B) by striking out "BENEFIT COMMITMENTS" in the paragraph heading and inserting in lieu thereof "TERMINATION LIABILITY".

(6) Paragraph (16) of section 4001(a) of ERISA is amended to read as follows:

"(16) 'termination liability' means all liabilities of employees and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Internal Revenue Code of 1986);".

(7) Paragraph (18) of section 4001(a) of ERISA is amended to read as follows:

"(18) 'unfunded termination liability' means, as of any date, the excess (if any) of—

"(A) the termination liability (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 4044), over

"(B) the current value (as of such date) of the assets of the plan;".

(8) Subsection (i) of section 4042 of ERISA is amended—

(A) by striking out "all benefit commitments under the plan are" and inserting in lieu thereof "all termination liability under the plan is attributable to", and

(B) by striking out "no amount of unfunded benefit commitments" and inserting in lieu thereof "no unfunded termination liability".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of any termination—

(1) where notice to the Pension Benefit Guaranty Corporation with respect to such termination is provided after October 16, 1987, or

(2) any termination instituted by such Corporation under section 4042 of ERISA after October 16, 1987.

SEC. 4558. DISTRESS TERMINATIONS.

(a) BANKRUPTCY REORGANIZATION PROCEEDINGS NOT SEPARATE BASIS FOR DISTRESS TERMINATION.—

(1) Subparagraph (B) of section 4041(c)(2) of ERISA is amended—

(A) by striking out "clause (i), (ii), or (iii)" in the material preceding clause (i) and inserting in lieu thereof "clause (i) or (ii)",

(B) by striking out "a substantial member" in the material preceding clause (i) and inserting in lieu thereof "a member",

(C) by inserting before the period at the end of clause (i) the following: "or become a case seeking a reorganization", and

(D) by striking out clause (ii) and redesignating clause (iii) as clause (ii).

(2) Paragraph (2) of section 4041(c) of ERISA is amended by striking out subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(3) Section 4067 of ERISA is amended by striking out "controlled groups who are" and inserting in lieu thereof "controlled groups who are or may become".

(b) EMPLOYER LIABILITY TO PARTICIPANTS BASED ON TERMINATION LIABILITY.—

(1) Subparagraph (A) of section 4062(c)(1) of ERISA is amended—

(A) by striking out "outstanding amount of the benefit commitments" and inserting in lieu thereof "outstanding amount of termination liability", and

(B) by striking out the second sentence and inserting in lieu thereof the following: "Except as provided in subparagraph (B), the liability of such person under this subsection shall be equal to the total outstanding amount of termination liability."

(2) Paragraph (19) of section 4001(a) of ERISA is amended to read as follows:

"(19) 'outstanding amount of termination liability' means, with respect to any plan, the excess (if any) of—

"(A) the termination liability (determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of section 4044), over

"(B) the termination liability which would be so determined by only taking into account benefits which are guaranteed under section 4022 or to which assets of the plan are required to be allocated under section 4044;".

(3) Subparagraph (A) of section 4049(c)(1) of ERISA is amended by striking out "the outstanding amount of benefit commitments to" and inserting in lieu thereof "the portion of the outstanding termination liability attributable to".

(4) Section 4062(c)(1)(B) of ERISA is amended by striking out "benefit commit-

ment" and inserting in lieu thereof "termination liability".

(c) EMPLOYER LIABILITY TO THE CORPORATION.—

(1) IN GENERAL.—Subparagraph (A) of section 4062(b)(1) of ERISA is amended to read as follows:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the liability to the corporation of a person described in subsection (a) shall be the total amount of the unfunded guaranteed benefits (as of the termination date) of all participants and beneficiaries under the plan, together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the Corporation."

(2) LIEN.—

(A) Subsection (a) of section 4068 of ERISA is amended—

(i) by striking out "section 4062(b)(1)(A)(i)" the first place it appears and inserting in lieu thereof "section 4062(b)(1)(A)", and

(ii) by striking out "section 4062(b)(1)(A)(i)" the second place it appears and inserting in lieu thereof "section 4062(b)(1)(A) (including interest)".

(B) Title IV of ERISA is amended by transferring subsection (e) of section 4062 of such Act to the end of section 4068 of such Act and by redesignating such subsection as subsection (f).

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2) or (3), the amendments made by this section shall apply in the case of—

(A) any termination where notice to the Pension Benefit Guaranty Corporation with respect to such termination is provided after October 16, 1987, and

(B) any termination instituted by such Corporation under section 4042 of ERISA after October 16, 1987.

(2) REORGANIZATIONS.—The amendments made by subsection (a) shall apply to petitions described in section 4041(c)(2)(B)(ii)(I) of ERISA filed after October 16, 1987.

(3) LIENS.—The amendments made by subsection (c)(2) shall not apply to a person for the period of any proceedings pursuant to a petition described in section 4041(c)(2)(B)(ii)(I) of ERISA filed before October 17, 1987.

SEC. 4559. IMPOSITION OF LIEN WHERE SIGNIFICANT UNFUNDED CURRENT LIABILITY.

(a) GENERAL RULE.—Subtitle A of title IV of ERISA (relating to Pension Benefit Guaranty Corporation) is amended by adding at the end thereof the following new section:

"IMPOSITION OF LIEN WHERE SIGNIFICANT UNFUNDED CURRENT LIABILITY

"SEC. 4011. (a) IN GENERAL.—If, as of the close of any plan year of a single-employer defined benefit plan—

"(1) the funded current liability percentage of the plan is less than 70 percent, and

"(2) the unfunded current liability of the plan is greater than $25,000,000,

there shall be a lien in favor of the plan in the amount determined under subsection (b) upon all property and rights to property, of the contributing sponsor maintaining the plan and each member of any controlled group (within the meaning of section 412(l)(8)(C)) of which such contributing sponsor is a member. The contributing sponsor shall notify the corporation within 2½ months after the close of any plan year if the plan is described in paragraphs (1) and (2) for such year.

"(b) AMOUNT AND PERIOD OF LIEN.—

"(A) AMOUNT.—The amount of the lien in effect for any plan year shall be the portion of the unfunded current liability of the plan for the plan year equal to the lesser of—

"(i) so much of the unfunded current liability as exceeds $25,000,000, or

"(ii) the amount necessary to increase the funded current liability percentage to 70 percent.

"(B) PERIOD OF LIEN.—The lien imposed by subsection (a) shall—

"(i) arise on the 1st day of the plan year following the 1st plan year in which the plan is described in paragraphs (1) and (2) of subsection (a), and

"(ii) shall continue for plan years until the close of a plan year in which the plan is not described in paragraphs (1) and (2) of subsection (a).

Another lien may be imposed after the expiration of a lien under this subparagraph.

"(c) ENFORCEMENT.—Any lien created under subsection (a) may be perfected and enforced only by the corporation, or at the direction of the corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) FUNDED CURRENT LIABILITY PERCENTAGE AND UNFUNDED CURRENT LIABILITY.—The terms 'funded current liability percentage' and 'unfunded current liability' shall have the meanings given such terms by section 302(d), except that in computing unfunded current liability there shall not be taken into account any unamortized portion of the unfunded old liability amount as of the close of the plan year.

"(2) CERTAIN RULES TO APPLY.—The amount subject to a lien imposed by subsection (a) shall be treated as taxes due and owing to the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 shall apply with respect to a lien imposed by subsection (a) and the amount of such lien."

(b) CLERICAL AMENDMENT.—The table of contents for ERISA is amended by inserting after the item relating to section 4010 the following new item:

"Sec. 4011. Imposition of lien where significant unfunded current liability."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after the date of the enactment of this Act.

CHAPTER 3—INCREASE IN PREMIUM RATES

SEC. 4560. INCREASE IN PREMIUM RATES.

(a) GENERAL RULE.—Clause (i) of section 4006(a)(3)(A) of ERISA is amended by striking out "$8.50" and inserting in lieu thereof "the sum of $14 plus the exposure-related premium (if any) determined under subparagraph (E)".

(b) DETERMINATION OF EXPOSURE-RELATED PREMIUM.—Paragraph (3) of section 4006(a) of ERISA is amended by adding at the end thereof the following new subparagraph:

"(E)(i) The exposure-related premium determined under this subparagraph with respect to any plan for any plan year shall be an amount equal to the amount determined under clause (ii) divided by the number of participants in such plan as of the close of the preceding plan year.

"(ii) The amount determined under this clause for any plan year shall be an amount equal to $6.00 for each $1,000 of unfunded current liability under the plan as of the close of the preceding plan year.

"(iii) For purposes of clause (ii)—

"(I) Except as provided in subclause (II), the term 'unfunded current liability' has the meaning given such term by section 412(l)(8)(A) of the Internal Revenue Code of 1986.

"(II) For purposes of subclause (I), in computing current liability under section 412(l)(8)(A)(i) of such Code, the applicable percentage under section 412(l)(7)(D)(ii) of such Code shall be 100 percent for any participant with more than 5 years of participation.

"(iv)(I) Except as provided in this clause, the aggregate increase in the premium payable with respect to any participant by reason of this subparagraph shall not exceed $70.

"(II) In the case of any plan year beginning in a calendar year after 1988, the $70 amount in subclause (I) shall be increased by the percentage (if any) by which the contribution and benefit base in effect during such calendar year under section 230 of the Social Security Act exceeds such contribution and benefit base in effect during 1988.

"(III) If an employer made contributions to a plan during 1 or more of the 5 plan years preceding the 1st plan year to which this subparagraph applies in an amount not less than the maximum amount allowable as a deduction with respect to such contributions under section 404 of such Code, the dollar amount in effect under subclause (I) for the 1st 5 plan years to which this subparagraph applies shall be reduced by $10 for each plan year for which such contributions were made. The $10 amount under the preceding sentence shall be adjusted at the same time and the same manner as provided under subclause (II).

"(v)(I) No additional premium shall be determined under this subparagraph with respect to any plan which has no more than 100 participants on each day during the preceding plan year.

"(II) In the case of a plan to which subclause (I) does not apply and which did not have more than 150 participants on each day during the preceding plan year, the amount of the additional premium under this subparagraph for such plan year shall be equal to the product of such premium determined without regard to this subclause multiplied by 2 percent for each participant in excess of 100.

"(III) For purposes of this clause, all single-employer plans maintained by the same contributing sponsor (or any member of such contributing sponsor's controlled group) shall be treated as 1 plan. For purposes of the preceding sentence, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of such Code."

(c) LIABILITY FOR PREMIUM.—

(1) IN GENERAL.—Section 4007 of ERISA is amended by striking out "plan administrator" each place it appears and inserting in lieu thereof "designated payor".

(2) DESIGNATED PAYOR.—Section 4007 of ERISA is amended by adding at the end thereof the following new subsection:

"(e)(1) For purposes of this section, the term 'designated payor' means—

"(A) the contributing sponsor or plan administrator in the case of a single-employer plan, and

"(B) the plan administrator in the case of a multiemployer plan.

"(2) If the designated payor of any single-employer plan is a member of a controlled group, each member of such group shall be jointly and severally liable for any premiums required to be paid by such designated

payor. For purposes of the preceding sentence, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986."

(d) DEPOSIT OF PREMIUMS INTO SEPARATE REVOLVING FUND.—Section 4005 of ERISA (relating to establishment of Pension Benefit Guaranty funds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f)(1) A seventh fund shall be established and credited with—

"(A) premiums, penalties, and interest charges collected under section 4006(a)(3)(A)(i) (not described in subparagraph (B)) to the extent attributable to the amount of the premium in excess of $8.50,

"(B) premiums, penalties, and interest charges collected under section 4006(a)(3)(E), and

"(C) earnings on investments of the fund or on assets credited to the fund.

"(2) Amounts in the fund shall be available for transfer to other funds established under this section with respect to a single-employer plan but shall not be available to pay—

"(A) administrative costs of the corporation, or

"(B) benefits under any plan which was terminated before January 1, 1988,

unless no other amounts are available for such payment.

"(3) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 1987.

PART VII—ESTATE AND GIFT TAXES

SEC. 4561. RETENTION OF 1987 RATES FOR 2 YEARS.

Subsection (c)(2)(D) of section 2001 (relating to rate schedule) is amended by striking out "or 1987" each place it appears in the text and heading thereof and inserting in lieu thereof "1987, 1988, or 1989".

PART VIII—EXCISE TAXES

SEC. 4571. EXTENSION OF TELEPHONE EXCISE TAX.

Paragraph (2) of section 4251(b) (relating to applicable percentage) is amended to read as follows:

"(2) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means 3 percent; except that, with respect to amounts paid pursuant to bills first rendered after 1990, the applicable percentage shall be zero."

SEC. 4572. FUELS FOR MOTOR VEHICLES AND CERTAIN OTHER FUELS IMPOSED AT WHOLESALE LEVEL.

(a) IN GENERAL.—Part III of subchapter A of chapter 32 is amended by inserting after subpart A the following new subpart:

"Subpart B—Fuels for Motor Vehicles and Certain Other Fuels

"Sec. 4091. Imposition of tax.
"Sec. 4092. Definitions.
"Sec. 4093. Exemption; special rule.

"SEC. 4091. IMPOSITION OF TAX.

"(a) IN GENERAL.—There is hereby imposed a tax on the sale of any taxable fuel by the producer or the importer thereof or by any producer of a taxable fuel.

"(b) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by subsection (a) shall be the sum of—

"(A)(i) the Highway Trust Fund financing rate in the case of diesel fuel and special motor fuels, or

"(ii) the Airport and Airway Trust Fund financing rate in the case of aviation fuel, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate in the case of any taxable fuel other than liquefied petroleum gas.

"(2) HIGHWAY TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Highway Trust Fund financing rate is—

"(A) 15 cents per gallon in the case of diesel fuel, and

"(B) 9 cents per gallon in the case of special motor fuels.

"(3) AIRPORT AND AIRWAY TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Airport and Airway Trust Fund financing rate is 14 cents per gallon.

"(4) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent per gallon.

"(5) TERMINATION OF RATES.—

"(A) The Highway Trust Fund financing rate shall not apply on and after October 1, 1993.

"(B) The Airport and Airway Trust Fund financing rate shall not apply on and after January 1, 1988.

"(C) The Leaking Underground Storage Tank Trust Fund financing rate shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

"(c) REDUCED RATE OF TAX FOR CERTAIN FUELS CONTAINING ALCOHOL.—Under regulations prescribed by the Secretary—

"(1) 10-PERCENT ALCOHOL FUELS.—

"(A) IN GENERAL.—The Highway Trust Fund financing rate shall be—

"(i) 9 cents per gallon in the case of the sale of any mixture of diesel fuel if—

"(I) at least 10 percent of such mixture consists of alcohol (as defined in section 4081(c)(3)), and

"(II) the diesel fuel in such mixture was not taxed under clause (ii),

"(ii) 10 cents per gallon in the case of the sale of diesel fuel for use in producing a mixture described in clause (i) at the time of such sale,

"(iii) 3 cents per gallon in the case of the sale of any mixture of special motor fuel if—

"(I) at least 10 percent of such mixture consists of alcohol (as so defined), and

"(II) the special motor fuel in such mixture was not taxed under clause (iv), and

"(iv) 3⅓ cents per gallon in the case of the sale of any special motor fuel for use in producing a mixture described in clause (iii).

"(B) LATER SEPARATION.—If any person separates the liquid fuel from a mixture of the liquid fuel and alcohol on which the Highway Trust Fund financing rate was determined under clause (i) or (iii) of subparagraph (A) (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the producer of such liquid fuel. The amount of tax imposed on any sale of such liquid fuel by such person shall be—

"(i) 5 cents per gallon in the case of diesel fuel, and

"(ii) 5⅔ cents per gallon in the case of any special motor fuel.

"(C) TERMINATION.—Subparagraph (A) shall not apply to any sale after September 30, 1993.

"(2) QUALIFIED METHANOL AND ETHANOL FUEL.—

"(A) IN GENERAL.—In the case of the sale of any special motor fuel which is a qualified methanol or ethanol fuel—

"(i) the Highway Trust Fund financing rate shall be 3 cents per gallon, and

"(ii) the Leaking Underground Storage Tank Trust Fund financing rate shall be 0.05 cent per gallon.

"(B) QUALIFIED METHANOL OR ETHANOL FUEL.—For purposes of subparagraph (A), the term 'qualified methanol or ethanol fuel' means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from a substance other than petroleum or natural gas.

"(C) TERMINATION.—Subparagraph (A) shall not apply to any sale after September 30, 1993.

"(3) PARTIALLY EXEMPT METHANOL OR ETHANOL FUEL.—

"(A) IN GENERAL.—In the case of the sale of any special motor fuel which is a partially exempt methanol or ethanol fuel, the Highway Trust Fund financing rate shall be 4 1/2 cents per gallon.

"(B) PARTIALLY EXEMPT METHANOL OR ETHANOL FUEL.—For purposes of subparagraph (A), the term 'partially exempt methanol or ethanol fuel' means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from natural gas.

"SEC. 4092. DEFINITIONS.

"(a) TAXABLE FUEL.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'taxable fuel' means—

"(A) diesel fuel,

"(B) any special motor fuel, and

"(C) any aviation fuel.

"(2) EXCEPTIONS.—The term 'taxable fuel' shall not include—

"(A) any product taxable under section 4081, or

"(B) any product for use as heating oil.

"(3) DIESEL FUEL.—The term 'diesel fuel' means any liquid which is suitable for use as a fuel in a diesel-powered highway vehicle or a diesel-powered train.

"(4) SPECIAL MOTOR FUEL.—

"(A) IN GENERAL.—The term 'special motor fuel' means any liquid described in subparagraph (B) which is suitable for use as a fuel in a motor vehicle or motorboat.

"(B) LIQUIDS DESCRIBED.—A liquid is described in this subparagraph if such liquid is benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, fuel oil, diesel fuel, or gasoline subject to tax under section 4081).

"(5) AVIATION FUEL.—The term 'aviation fuel' means any liquid which is suitable for use as a fuel in an aircraft.

"(b) PRODUCER.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'producer' includes—

"(A) any person who is a refiner, compounder, blender, or wholesale distributor, and a dealer selling taxable fuel exclusively to producers of taxable fuel, as well as a producer,

"(B) but only if such person elects to register under section 4101 with respect to the tax imposed by section 4091.

Any person to whom taxable fuel is sold tax-free under this subpart shall be considered the producer of such taxable fuel.

"(2) WHOLESALE DISTRIBUTOR.—For purposes of paragraph (1), the term 'wholesale distributor' includes any person who sells taxable fuel to producers, retailers, or to

users who purchase in bulk quantities and deliver into bulk storage tanks. Such term does not include any person who (excluding the term 'wholesale distributor' from paragraph (1)) is a producer or importer.

"SEC. 4093. EXEMPTION; SPECIAL RULES.

"(a) EXEMPTION OF SALES TO PRODUCER.—Under regulations prescribed by the Secretary, the tax imposed by section 4091 shall not apply in the case of sales of a taxable fuel to a producer of such fuel.

"(b) CERTAIN USES TREATED AS SALES.—If a producer or importer uses (otherwise than in the production of any taxable fuel) any taxable fuel sold to him free of tax, or produced or imported by him, such use shall be treated for the purposes of this chapter as a sale.

"(c) SPECIAL ADMINISTRATIVE RULES.—Under regulations prescribed by the Secretary, information reporting by the remitter of the tax under this section and information reporting and registration by such other persons shall be required as the Secretary deems necessary.

"(d) CROSS REFERENCE.—

For provisions allowing a credit or refund for fuel not used for certain taxable purposes, see section 6427."

(b) CONFORMING AMENDMENT TO SECTION 4041.—

(1) So much of section 4041 as precedes subsection (f) is amended to read as follows:

"SEC. 4041. GASOLINE USED IN NONCOMMERCIAL AVIATION.

"(a) IMPOSITION OF TAX.—

"(1) IN GENERAL.—There is hereby imposed a tax (at the rate specified in paragraph (2)) on any product taxable under section 4081—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft, for use as a fuel in such aircraft in noncommercial aviation, or

"(B) used by any person as a fuel in an aircraft in noncommercial aviation, unless there was a taxable sale of such product under subparagraph (A).

The tax imposed by this paragraph shall be in addition to any tax imposed under section 4081.

"(2) RATE OF TAX.—The rate of tax imposed by paragraph (1) on any product taxable under section 4081 is the excess of 12 cents a gallon over the Highway Trust Fund financing rate at which tax was imposed on such product under section 4081.

"(3) NONCOMMERCIAL AVIATION DEFINED.—For purposes of this section, the term 'noncommercial aviation' means any use of aircraft, other than use in a business of transporting persons or property for compensation or hire by air. The term also includes any use of an aircraft, in a business described in the preceding sentence, which is properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282.

"(4) TERMINATION.—The tax imposed by paragraph (1) shall not apply on and after January 1, 1988."

(2) Section 4041 is amended by striking out subsections (i), (j), (k), (m), and (n), and by redesignating subsections (f), (g), (h), and (l) as subsections (b), (c), (d), and (e), respectively.

(3) Section 4041 is amended by adding at the end thereof the following new subsections:

"(f) EXEMPTION FOR CERTAIN FUELS CONTAINING ALCOHOL.—

"(1) IN GENERAL.—No tax shall be imposed under this section on—

"(A) any liquid at least 10 percent of which consists of alcohol (as defined in section 4081(c)(3)), and

"(B) any partially exempt methanol or ethanol fuel.

"(2) PARTIALLY EXEMPT METHANOL OR ETHANOL FUEL.—For purposes of this subsection, the term 'partially exempt methanol or ethanol fuel' means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from natural gas.

"(3) SPECIAL RULES RELATING TO 10 PERCENT ALCOHOL FUELS.—

"(A) LATER SEPARATION.—If any person separates the liquid fuel from a mixture of the liquid fuel and alcohol to which paragraph (1)(A) applied, such separation shall be treated as a sale of the liquid fuel.

"(B) TERMINATION.—Paragraph (1)(A) shall not apply to any sale or use after September 30, 1993.

"(g) OTHER SPECIAL RULES.—

"(1) REGISTRATION.—If any product taxable under section 4081 is sold by any person for use as a fuel in an aircraft, it shall be presumed for purposes of this section that the tax imposed by this section applies to such sale unless the purchaser is registered in such manner (and furnishes such information in respect of the use of the product) as the Secretary shall by regulations prescribe.

"(2) SALES BY THE UNITED STATES, ETC.—The tax imposed by this section shall apply with respect to liquids sold at retail by the United States, or by any agency or instrumentality of the United States, unless sales by such agency or instrumentality are by statute specifically exempted from such taxes."

(4) Paragraph (3) of section 4041(b), as redesignated by this subsection, is amended by striking out "Except with respect to the taxes imposed by subsection (d), paragraph" and inserting in lieu thereof "Paragraph".

(5) The last sentence of section 4041(c), as redesignated by this subsection, is amended by striking out "Except with respect to the taxes imposed by subsection (d), paragraphs" and inserting in lieu thereof "Paragraphs".

(c) AMENDMENTS RELATING TO CREDITS AND REFUNDS.—

(1) Subsection (a) of section 6427 is amended—

(A) by striking out "section 4041(a) or (c)" and inserting in lieu thereof "section 4041", and

(B) by inserting "OF FUEL SOLD FOR USE IN AVIATION" after "NONTAXABLE USES" in the heading.

(2) Subsection (b) of section 6427 is amended by striking out "subsection (a) of section 4041" each place it appears and inserting in lieu thereof "section 4041 or 4091".

(3) Subsection (c) of section 6427 is amended—

(A) by striking out "section 4041(a) or (c)" and inserting in lieu thereof "section 4041 or 4091", and

(B) by striking out the parenthetical in the last sentence and inserting in lieu thereof "(except that references to gasoline in such paragraph (4) shall be treated as references to fuels taxable under sections 4041 and 4091)".

(4) Subsection (d) of section 6427 is amended—

(A) by inserting "or 4091" after "section 4041" in paragraph (2) thereof,

(B) by striking out "section 4041(h)(2)" and inserting in lieu thereof "section 4041(d)(2)",

(C) by striking out "section 4041(h)(2)(C)" and inserting in lieu thereof "section 4041(d)(2)(C)", and

(D) by striking out "section 4041(l)" and inserting in lieu thereof "section 4041(e)".

(5) Subparagraph (B) of section 6427(e)(1) is amended by inserting "or 4091" after "section 4041".

(6) Subsection (f) of section 6427 is amended to read as follows:

"(f) TAXABLE LIQUIDS USED TO PRODUCE CERTAIN ALCOHOL FUELS.—

"(1) IN GENERAL.—Except as provided in subsection (k), if any gasoline, diesel fuel, or special motor fuel on which tax was imposed at the regular Highway Trust Fund financing rate is used by any person in producing a mixture described in section 4081(c) or in clause (i) or (iii) of section 4091(c)(1)(A) (as the case may be) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular Highway Trust Fund financing rate over the incentive Highway Trust Fund financing rate with respect to such fuel.

"(2) DEFINITIONS.—For purposes of paragraph (1)—

"(A) REGULAR HIGHWAY TRUST FUND FINANCING RATE.—The term 'regular Highway Trust Fund financing rate' means—

"(i) 9 cents per gallon in the case of gasoline,

"(ii) 15 cents per gallon in the case of diesel fuel, or

"(iii) 9 cents per gallon in the case of a special motor fuel.

"(B) INCENTIVE HIGHWAY TRUST FUND FINANCING RATE.—The term 'incentive Highway Trust Fund financing rate' means—

"(i) 5 2/3 cents per gallon in the case of gasoline,

"(ii) 10 cents per gallon in the case of diesel fuel, or

"(iii) 5 2/3 cents per gallon in the case of a special motor fuel.

"(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any gasoline, diesel fuel, or special motor fuel with respect to which an amount is payable under subsection (b), (d), (e), or (m) of this section or under section 6420 or 6421."

(7) Subsection (i) of section 6427 is amended by striking out "and (h)" each place it appears and inserting in lieu thereof "(h), and (m)".

(8) Paragraph (1) of section 6427(l) is amended by striking out "section 4041(c)(2)" each place it appears and inserting in lieu thereof "section 4041".

(9) Section 6427 is amended by striking out subsection (o), by redesignating subsections (m) and (n) as subsections (n) and (o), respectively, and by inserting after subsection (l) the following new subsection:

"(m) NONTAXABLE USES OF FUEL SOLD FOR USE IN CERTAIN VEHICLES, ETC.—

"(1) IN GENERAL.—Except as provided in subsection (k), if any fuel on which tax has been imposed under section 4091 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to such person an amount equal to the amount determined by multiplying the number of gallons so used by the rate at which tax was imposed on such fuel under section 4091.

"(2) NONTAXABLE USE.—For purposes of this subsection, the term 'nontaxable use' means—

"(A) in the case of diesel fuel, any use other than use as a fuel in a diesel-powered highway vehicle or a diesel-powered train,

"(B) in the case of any special motor fuel, any use other than use as a fuel in a motor vehicle or motorboat,

"(C) in the case of diesel fuel and any special motor fuel, any off-highway business use (as defined in section 6421(e)(2)), and

"(D) in the case of aviation fuel, any use other than use as a fuel in an aircraft in noncommercial aviation (within the meaning of section 4041(a)(3)).

For purposes of the preceding sentence, the terms 'diesel fuel', 'special motor fuel', and 'aviation fuel' have the respective meanings given such terms by section 4092.

"(3) REFUND OF HIGHWAY TRUST FUND FINANCING RATE FOR DIESEL FUEL USED IN TRAINS.—For purposes of paragraph (1), the use of diesel fuel as a fuel in a diesel-powered train shall be treated as a nontaxable use but only with respect to the portion of the tax imposed on such fuel by section 4091 which is attributable to the Highway Trust Fund financing rate under such section.

"(4) REFUND OF AIRPORT AND AIRWAY TRUST FUND FINANCING RATE FOR AVIATION FUEL USED IN NONCOMMERCIAL AVIATION.—For purposes of paragraph (1), the use of aviation fuel as a fuel in an aircraft in noncommercial aviation (within the meaning of section 4041(a)(3)) shall be treated as a nontaxable use but only with respect to the portion of the tax imposed on such fuel by section 4091 which is attributable to the Airport and Airway Trust Fund financing rate under such section."

(10) Subsection (o) of section 6427, as redesignated by paragraph (9), is amended to read as follows:

"(o) TERMINATION OF CERTAIN PROVISIONS.—Except with respect to taxes imposed at the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 or 4091, subsections (a), (b), (c), (d), (g), (h), and (m) shall apply only with respect to fuels purchased before October 1, 1993."

(d) OTHER CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 40 is amended by striking out "subsection (b)(2), (k), or (m) of section 4041 or section 4081(c)" and inserting in lieu thereof "section 4041(f), 4081(c), or 4091(c)".

(2) Subparagraph (B) of section 4081(e)(2), as amended by section 1703 of the Tax Reform Act of 1986, is amended by striking out "net revenues" and all that follows and inserting in lieu thereof the following: "net revenues are at least $500,000,000 from taxes attributable to Leaking Underground Storage Tank Trust Fund financing rates of tax imposed under this section and sections 4042 and 4091."

(3) Subsection (a) of section 4101, as amended by section 1703 of the Tax Reform Act of 1986, is amended by inserting "or 4091" after "section 4081".

(4) Subsection (a) of section 4221 is amended by inserting "or 4091" after "section 4081".

(5) Section 6206 is amended by striking out "or 4041" and inserting in lieu thereof "or 4041 or 4091".

(6) Subparagraph (A) of section 6416(a)(2) is amended by striking out "special fuels" and inserting in lieu thereof "gasoline used in noncommercial aviation".

(7) Paragraph (2) of section 6416(b) is amended by striking out "or under paragraph (1)(A) or (2)(A) of section 4041(a) or under paragraph (1)(A) or (2)(A) of section 4041(d)".

(8) Subparagraph (F) of section 6416(b)(2) is amended by striking out "referred to in section 4041" and inserting in lieu thereof "(as defined in section 4092(a)(4))".

(9) Subparagraph (A) of section 6416(b)(3) is amended by inserting "and other than any taxable fuel under section 4091" after "section 4081".

(10) Subparagraph (B) of section 6416(b)(3) is amended by striking out "such gasoline" and inserting in lieu thereof "or any taxable fuel under section 4091, such gasoline or fuel".

(11) Paragraph (1) of section 6420(i) is amended to read as follows:

"(1) For credit or refund of tax in case of special motor fuels used on a farm for farming purposes, see section 6427."

(12) Subparagraph (C) of section 6421(e)(2) is amended to read as follows:

"(C) COMMERCIAL FISHING VESSELS.—For provisions allowing a credit or refund for gasoline and special motor fuels used for commercial fishing vessels, see section 6416(b)(2)(B)."

(13) Subparagraph (A) of section 6421(f)(2) is amended by striking out "section 4041(c)(4)" and inserting in lieu thereof "section 4041(a)(3)".

(14) Subsection (j) of section 6421 is amended by striking out paragraph (1) and by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(15) Section 6652 is amended by striking out subsection (j) (relating to failure to give written notice to certain sellers of diesel fuel) and by redesignating subsections (l) and (m) as subsections (k) and (l), respectively.

(16) Paragraph (1) of section 9502(b) is amended by striking out "subsections (c) and (e) of section 4041 (taxes on aviation fuel)" and inserting in lieu thereof "section 4041 (relating to gasoline used in noncommercial aviation)".

(17) Subsection (b) of section 9502 is amended by striking out "and" at the end of paragraph (2); by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) amounts determined by the Secretary to be equivalent to the taxes received in the Treasury before January 1, 1988, under section 4091 (to the extent attributable to the Airport and Airway Trust Fund financing rate), and".

(18) Paragraph (1) of section 9503(b) is amended by striking out subparagraph (A), by redesignating subparagraphs (B) through (G) as subparagraphs (A) through (F), respectively, and by striking out subparagraph (E) (as so redesignated) and inserting in lieu thereof the following:

"(E) section 4091 (relating to tax on fuels for motor vehicles and certain other fuels),".

(19) Paragraph (4) of section 9503(b) is amended to read as follows:

"(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2), there shall be taken into account the taxes imposed by sections 4081 and 4091 only to the extent attributable to the Highway Trust Fund financing rates under such sections."

(20) Subparagraph (D) of section 9503(c)(4) is amended to read as follows:

"(D) MOTORBOAT FUEL TAXES.—For purposes of this paragraph, the term 'motorboat fuel taxes' means taxes under sections 4081 and 4091 (to the extent attributable to the Highway Trust Fund financing rates under such sections) with respect to gasoline and special motor fuels used as a fuel in motorboats."

(21) Paragraph (2) of section 9503(e) is amended—

(A) by striking out "sections 4041 and 4081" and inserting in lieu thereof "sections 4081 and 4091", and

(B) by striking out "section 4041 or 4081" and inserting in lieu thereof "section 4081 or 4091".

(22) Paragraph (1) of section 9508(b) is amended to read as follows:

"(1) taxes received in the Treasury under section 4091 (relating to tax on fuels for motor vehicles and certain other fuels) to the extent attributable to the Leaking Underground Storage Trust Fund financing rate under such section,".

(23) Subparagraph (A) of section 9508(c)(2) is amended by striking out clause (ii) and all that follows and inserting in lieu thereof the following:

"(ii) credits allowed under section 34,

with respect to the taxes imposed by sections 4081 and 4091 (to the extent attributable to the Leaking Underground Storage Trust Fund financing rate under such sections)."

(24) The table of subparts for part III of subchapter A of chapter 32 is amended by inserting after the item relating to subpart A the following new item:

"Subpart B. Fuels for motor vehicles and certain other fuels."

(25) The table of sections for subchapter A of chapter 31 is amended by striking out the item relating to section 4041 and inserting in lieu thereof the following new item:

"Sec. 4041. Gasoline used in noncommercial aviation."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 1987.

(f) FLOOR STOCKS TAX.—

(1) IMPOSITION OF TAX.—On any taxable fuel which on January 1, 1988, is held by a taxable person, there is hereby imposed a floor stocks tax at the rate of tax which would be imposed if such fuel were sold on such date in a sale subject to tax under section 4091 of the Internal Revenue Code of 1986 (as added by this section).

(2) OVERPAYMENT OF FLOOR STOCKS TAXES, ETC.—Sections 6416 and 6427 of such Code shall apply in respect of the floor stocks taxes imposed by this section so as to entitle, subject to all provisions of such sections, any person paying such floor stocks taxes to a credit or refund thereof for any reason specified in such section. All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4091 of such Code (as so added) shall apply to the floor stocks taxes imposed by this subsection.

(3) DUE DATE OF TAX.—The taxes imposed by this subsection shall be paid before February 16, 1988.

(4) DEFINITIONS.—For purposes of this subsection—

(A) TAXABLE FUEL.—The term "taxable fuel" means any liquid subject to tax under section 4091 of such Code (as so added).

(B) TAXABLE PERSON.—The term "taxable person" means any person who holds any taxable fuel on which no tax has been imposed under section 4041 of such Code (as in effect on the day before the date of the enactment of this Act) unless the taxpayer establishes to the satisfaction of the Secretary that tax will be imposed on the sale of such fuel by such person (or any subsequent seller) under section 4091 of such Code (as so added) or the use by such person of such fuel will be for a nontaxable purpose.

(C) HELD BY A TAXABLE PERSON.—An article shall be treated as held by a person if title thereto has passed to such person (whether or not delivery to such person has been made).

(5) TRANSFER OF FLOOR STOCK REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4091 of such Code (as so added).

SEC. 4573. EXTENSION OF TEMPORARY INCREASE IN AMOUNT OF TAX IMPOSED ON COAL PRODUCERS.

Subparagraph (A) of section 4121(e)(2) (relating to the temporary increase termination date) is amended by striking out "January 1, 1996" and inserting in lieu thereof "January 1, 2014".

PART IX—EMPLOYMENT TAXES

SEC. 4581. INCREASE IN RATES OF TIER 2 RAILROAD RETIREMENT TAX ON EMPLOYEES FOR 1988 AND THEREAFTER.

(a) IN GENERAL.—Subsection (b) of section 3201 (relating to tier 2 employee tax) is amended to read as follows:

"(b) TIER 2 TAX.—In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to 4.90 percent of the compensation received during any calendar year by such employee for services rendered by such employee."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to compensation received after December 31, 1987.

SEC. 4582. INCREASE IN RATES OF TIER 2 RAILROAD RETIREMENT TAX ON EMPLOYERS FOR 1988 AND THEREAFTER.

(a) IN GENERAL.—Subsection (b) of section 3221 (relating to tier 2 employer tax) is amended to read as follows:

"(b) TIER 2 TAX.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 16.10 percent of the compensation paid during any calendar year by such employer for services rendered to such employer."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to compensation paid after December 31, 1987.

SEC. 4583. COMMISSION ON RAILROAD RETIREMENT REFORM.

(a) COMMISSION ON RAILROAD RETIREMENT REFORM.—There is established a commission to be known as the Commission on Railroad Retirement Reform (in this section referred to as the "Commission").

(b) STUDY.—The Commission shall conduct a comprehensive study of the issues pertaining to the long-term financing, structure, and objectives of the railroad retirement system. The Commission shall submit recommendations to the Congress for revisions in, or alternatives to, the current system, to assure the provision of adequate retirement benefits to former, present, and future railroad employees on an actuarially sound basis. The study will take into account—

(1) the possibility of restructuring the financing of railroad retirement benefits through increases in the tier 2 tax rate, increases in the tier 2 tax wage base, the imposition of a tax on operating revenues, revisions in the investment policy of the railroad retirement pension fund, and establishing a privately funded and administered railroad industry pension plan;

(2) the economic outlook for the railroad industry, and the nature of the relationships between the railroad retirement system, levels of railroad employment and compensation, and the performance of the rail sector; and

(3) any other matters which the Commission considers would be necessary, appropriate, or useful to the Congress in developing legislation to reform the railroad retirement system.

(c) MEMBERSHIP OF THE COMMISSION.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 8 members, as follows:

(A) 4 individuals appointed by the President—

(i) one of whom shall be appointed on the basis of recommendations made by representatives of employers (as defined in section 1(a) of the Railroad Retirement Act of 1974) so as to provide representation on the Commission satisfactory to the largest number of employers concerned,

(ii) one of whom shall be appointed on the basis of recommendations made by representatives of employees (as defined in section 1(b) of the Railroad Retirement Act of 1974) so as to provide representation on the Commission satisfactory to the largest number of employees concerned,

(iii) one of whom shall be appointed on the basis of recommendations made by representatives of commuter railroads, and

(iv) one of whom shall be appointed from members of the public;

(B) 2 individuals appointed by the Speaker of the House of Representatives from among members of the public—

(i) one of whom shall be appointed after consultation with the Chairman of the Committee on Ways and Means of the House of Representatives, and

(ii) one of whom shall be appointed after consultation with the Chairman of the Committee on Energy and Commerce of the House of Representatives; and

(C) 2 individuals appointed by the President pro tempore of the Senate from among members of the public—

(i) one of whom shall be appointed after consultation with the Chairman of the Committee on Finance of the Senate, and

(ii) one of whom shall be appointed after consultation with the Chairman of the Committee on Labor and Human Resources of the Senate.

All public members of the Commission shall be appointed from among individuals who are not in the employment of and are not pecuniarily or otherwise interested in any employer (as so defined) or organization of employees (as so defined). In making appointments under this section, the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate shall ensure that the members of the Commission collectively, possess special knowledge of retirement income policy, social insurance, private pensions, taxation, and the structure of the transportation industry. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(2) BASIC PAY.—The members of the Commission shall each be paid at a rate equal to the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission.

(3) QUORUM.—Four members of the Commission shall constitute a quorum but a lesser number may hold hearings.

(4) CHAIRMAN.—The President shall appoint as Chairman one member from the members appointed from the public.

(d) STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.—

(1) STAFF.—Subject to such rules as may be prescribed by the Commission, the Chairman may appoint and fix the pay of such personnel as the Chairman considers appropriate.

(2) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointment in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(3) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Commission, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(4) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the Railroad Retirement Board and any other Federal agency may detail, on a reimbursable basis, any of the personnel thereof to the Commission to assist the Commission in carrying out its duties under this section.

(e) ACCESS TO OFFICIAL DATA AND SERVICES.—

(1) OFFICIAL DATA.—The Commission may, as appropriate, secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman of the Commission, the head of such department or agency shall, as appropriate, furnish such information to the Commission.

(2) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(3) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(f) REPORT.—The Commission shall transmit a report to the President and to each House of Congress not later than October 1, 1989. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its legislative recommendations.

(g) TERMINATION.—The Commission shall cease to exist 60 days after submitting its report pursuant to subsection (f).

SEC. 4584. TRANSFER TO RAILROAD RETIREMENT ACCOUNT.

Subsection (c)(1)(A) of section 224 of the Railroad Retirement Solvency Act of 1983 (relating to section 72(r) revenue increase transferred to certain railroad accounts) is amended—

(1) by inserting "(other than amounts described in subparagraph (B))" after "amounts",

(2) by striking out "1988" and inserting in lieu thereof "1990", and

(3) by striking out the last sentence.

SEC. 4585. EXTENSION OF FUTA REPAYMENT TAX.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 3301 of the Federal Unemployment Tax Act (26 U.S.C. 3301) are amended to read as follows:

"(1) 6.2 percent in the case of calendar years 1988, 1989, and 1990; or

"(2) 6.0 percent in the case of calendar year 1991 and each calendar year thereafter;".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to wages paid on or after January 1, 1988.

SEC. 4586. TRANSFER OF FUNDS INTO THE FEDERAL UNEMPLOYMENT ACCOUNT AND THE EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.

(a) IN GENERAL.—Section 901 of the Social Security Act (42 U.S.C. 1101) is amended by adding at the end the following new subsection:

"Transfers For Calendar Years 1988, 1989, and 1990

"(g)(1) With respect to calendar years 1988, 1989, and 1990, the Secretary of the Treasury shall transfer from the employment security administration account—

"(A) to the Federal unemployment account an amount equal to 50 percent of the amount of tax received under section 3301(1) of the Federal Unemployment Tax Act which is attributable to the difference in the tax rates between paragraphs (1) and (2) of such section; and

"(B) to the extended unemployment compensation account an amount equal to 50 percent of such amount of tax received.

"(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2) with respect to wages paid during such calendar years."

(b) INCREASE IN THE LIMITATION ON THE AMOUNTS IN SUCH ACCOUNTS.—(1) Section 902(a)(2) of such Act (42 U.S.C. 1102(a)(2)) is amended by striking out "one-eighth" and inserting in lieu thereof "five-eighths".

(2) Section 905(b)(2)(B) of such Act (42 U.S.C. 1105(b)(2)(B)) is amended by striking out "one-eighth" and inserting in lieu thereof "three-eighths".

(c) CONFORMING AMENDMENTS.—(1) Section 905(b)(1) of such Act (42 U.S.C. 1105(b)(1)) is amended by striking out the last sentence thereof.

(2) Section 901(c)(3)(C) of such Act (42 U.S.C. 1101(c)(3)(C)) is amended by striking out "(i)" and all that follows through the period and inserting in lieu thereof "a tax rate of 0.6 percent."

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective on the date of the enactment of this Act.

SEC. 4587. APPLICATION OF EMPLOYER TAXES TO EMPLOYEES' CASH TIPS.

(a) APPLICATION OF TAX TO TIPS.—Section 3121(q) (relating to inclusion of tips for employee taxes) is amended—

(1) by striking "EMPLOYEE TAXES" in the heading and inserting "BOTH EMPLOYEE AND EMPLOYER TAXES":

(2) by striking "other than for purposes of the taxes imposed by section 3111";

(3) by striking "remuneration for employment" and inserting "remuneration for such employment (and deemed to have been paid by the employer for purposes of subsections (a) and (b) of section 3111)"; and

(4) by inserting after "at the time received" the following: "; except that, in determining the employer's liability in connection with the taxes imposed by section 3111 with respect to such tips in any case where no statement including such tips was so furnished (or to the extent that the statement so furnished was inaccurate or incomplete), such remuneration shall be deemed for purposes of subtitle F to be paid on the date on which notice and demand for such taxes is made to the employer by the Secretary".

(b) CONFORMING AMENDMENTS.—(1) Subsections (a) and (b) of section 3111(a) (relating to rate of tax on employers) are each amended by striking "and (t)".

(2) Section 3121(t) (relating to special rule) is repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to tips received (and wages paid) on and after January 1, 1988.

SEC. 4588. COVERAGE OF INACTIVE DUTY MILITARY TRAINING.

(a) SOCIAL SECURITY ACT AMENDMENT.—Paragraph (1) of section 210(l) of the Social Security Act is amended to read as follows:

"(l)(1) Except as provided in paragraph (4), the term 'employment' shall, notwithstanding the provisions of subsection (a) of this section, include—

"(A) service performed after December 1956 by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

"(B) service performed after December 1987 by an individual as a member of a uniformed service on inactive duty training.".

(b) FICA AMENDMENT.—Paragraph (1) of section 3121(m) (relating to inclusion of service in the uniformed services) is amended to read as follows:

"(1) INCLUSION OF SERVICE.—The term 'employment' shall, notwithstanding the provisions of subsection (b) of this section, include—

"(A) service performed by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

"(B) service performed by an individual as a member of a uniformed service on inactive duty training.".

(c) COMPUTATION OF WAGES.—

(1) IN GENERAL.—Paragraph (2) of section 3121(i) (relating to computation of wages for service in the uniformed services) is amended by inserting "and his compensation for inactive duty training that is computed as a rate of basic pay" after "basic pay".

(2) CONFORMING AMENDMENT.—The second paragraph following subsection (s) of section 209 of the Social Security Act (42 U.S.C. 409) is amended by inserting "and his compensation for inactive duty training that is computed as a rate of basic pay" after "basic pay".

(d) CONFORMING AMENDMENT.—Section 229(a) of the Social Security Act (42 U.S.C. 429) is amended by striking out "section 210(l)" and inserting in lieu thereof "section 210(l)(1)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1987.

SEC. 4589. COVERAGE OF ALL CASH PAY OF AGRICULTURAL EMPLOYEES WHOSE EMPLOYERS SPEND $2,500 OR MORE A YEAR FOR AGRICULTURAL LABOR.

(a) SOCIAL SECURITY ACT AMENDMENT.—Paragraph (2) of section 209(h) of the Social Security Act is amended by striking clause (B) and inserting "(B) the employer's expenditures for agricultural labor in such year equal or exceed $2,500;".

(b) FICA AMENDMENT.—Subparagraph (B) of section 3121(a)(8) (relating to wages) is amended by striking clause (ii) and inserting "(ii) the employer's expenditures for agricultural labor in such year equal or exceed $2,500;".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration for agricultural labor paid after December 31, 1987.

SEC. 4590. COVERAGE OF THE EMPLOYER COST OF GROUP-TERM LIFE INSURANCE.

(a) COVERAGE UNDER OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM.—

(1) SOCIAL SECURITY ACT AMENDMENT.—Paragraph (3) of section 209(b) of the Social Security Act is amended by striking "death" and inserting "death, except that this subsection (b) does not apply to such amount to the extent of the amount includible in the gross income of the employee under the Internal Revenue Code of 1986".

(2) FICA AMENDMENT.—Subparagraph (C) of section 3121(a)(2) (relating to wages) is amended by striking "death" and inserting "death, except that this paragraph does not apply to such amount to the extent of the amount includible in the gross income of the employee".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to group-term life insurance coverage in effect after December 31, 1987.

SEC. 4591. COVERAGE OF SERVICES PERFORMED BY ONE SPOUSE IN THE EMPLOY OF THE OTHER.

(a) SOCIAL SECURITY ACT AMENDMENTS.—

(1) IN GENERAL.—Subparagraph (A) of section 210(a)(3) of the Social Security Act is amended by striking "performed by an individual in the employ of his spouse, and service".

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF A SPOUSE.—Paragraph (3) of section 210(a) of such Act is amended by striking so much of subparagraph (B) as precedes clause (i) and inserting the following:

"(B) Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—".

(b) FICA AMENDMENTS.—

(1) IN GENERAL.—Subparagraph (A) of section 3121(b)(3) (relating to employment) is amended by striking "performed by an individual in the employ of his spouse, and service".

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF A SPOUSE.—Paragraph (3) of section 3121(b) (relating to employment) is amended by striking so much of subparagraph (B) as precedes clause (i) and inserting the following:

"(B) service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1987.

SEC. 4592. TREATMENT OF SERVICE PERFORMED BY AN INDIVIDUAL IN THE EMPLOY OF A PARENT.

(a) SOCIAL SECURITY ACT AMENDMENTS.—

(1) AGE BELOW WHICH SERVICE FOR PARENT IS EXCLUDED FROM COVERED EMPLOYMENT REDUCED TO AGE 18.—Subparagraph (A) of section 210(a)(3) of the Social Security Act (as amended by section 4591(a)(1) of this Act) is further amended by striking "twenty-one" and inserting "18".

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF PARENT.—Subparagraph (B) of section 210(a)(3) of such Act (as amended by section 4591(a)(2) of this Act) is further amended by inserting "under the age of 21 in the employ of his father or mother, or performed by an individual" after "individual" the first place it appears.

(b) FICA AMENDMENTS.—

(1) AGE BELOW WHICH SERVICE FOR PARENT IS EXCLUDED FROM COVERED EMPLOYMENT REDUCED TO AGE 18.—Subparagraph (A) of section 3121(b)(3) (as amended by section 6591(b)(1) of this Act) is further amended by striking "21" and inserting "18".

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF PARENT.—Subparagraph (B) of section 3121(b)(3) (as amended by section 6591(b)(2) of this Act) is further amended by inserting "under the age of 21 in the employ of his father or mother, or performed by an individual" after "individual" the first place it appears.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1987.

PART X—USER FEES

SEC. 4595. FEES FOR REQUESTS FOR RULING, DETERMINATION, AND SIMILAR LETTERS.

(a) GENERAL RULE.—The Secretary of the Treasury or his delegate (hereinafter in this section referred to as the "Secretary") shall establish a program requiring the payment of user fees for requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters and for similar requests.

(b) PROGRAM CRITERIA.—

(1) IN GENERAL.—The fees charged under the program required by subsection (a)—

(A) shall vary according to categories (or subcategories) established by the Secretary,

(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

(C) shall be payable in advance.

(2) EXEMPTIONS, ETC.—The Secretary shall provide for such exemptions (and reduced fees) under such program as he determines to be appropriate.

(3) AVERAGE FEE REQUIREMENT.—The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

Category	Average Fee
Employee plan ruling and opinion	$400
Exempt organization ruling	$320
Employee plan determination	$255
Exempt organization determination	$200
Chief counsel ruling	$200

(c) APPLICATION OF SECTION.—Subsection (a) shall apply with respect to requests made on or after the 1st day of the second calendar month beginning after the date of the enactment of this Act and before September 30, 1990.

SEC. 4596. OCCUPATIONAL TAXES RELATING TO ALCOHOL, TOBACCO, AND FIREARMS.

(a) OCCUPATIONAL TAXES ON DISTILLED SPIRITS PLANTS, BONDED WINE CELLARS, BREWERIES, ETC.—

(1) DISTILLED SPIRITS PLANTS, BONDED WINE CELLARS, ETC.—

(A) IN GENERAL.—Part II of subchapter A of chapter 51 (relating to distilled spirits, wines, and beer) is amended by inserting before subpart B the following new subpart:

"Subpart A—Proprietors of Distilled Spirits Plants, Bonded Wine Cellars, Etc.

"Sec. 5081. Imposition and rate of tax.

"SEC. 5081. IMPOSITION AND RATE OF TAX.

"(a) GENERAL RULE.—Every proprietor of—

"(1) a distilled spirits plant,

"(2) a bonded wine cellar,

"(3) a bonded wine warehouse, or

"(4) a taxpaid wine bottling house,

shall pay a tax of $1,000 per year in respect of each such premises.

"(b) REDUCED RATES FOR SMALL PROPRIETORS.—

"(1) IN GENERAL.—Subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) CONTROLLED GROUP RULES.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) CERTAIN RULES TO APPLY.—For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply."

(B) TECHNICAL AMENDMENTS.—

(i) Subsection (a) of section 5691 is amended by striking out "the business of a brewer, wholesale dealer in liquors, retail dealer in liquors, wholesale dealer in beer, retail dealer in beer, or limited retail dealer," and inserting in lieu thereof "a business subject to a special tax imposed by part II of subchapter A or section 5276 (relating to occupational taxes)".

(ii) The section heading of section 5691 is amended by striking out "RELATING TO LIQUORS".

(iii) The table of sections for part V of subchapter J of chapter 51 is amended by striking out "relating to liquors" in the item relating to section 5691.

(C) CLERICAL AMENDMENT.—The table of subparts for part II of subchapter A of chapter 51 is amended by inserting before the item relating to subpart B the following new item:

"Subpart A. Proprietors of distilled spirits plants, bonded wine cellars, etc."

(2) BREWERIES.—Section 5091 (relating to imposition and rate of tax on brewers) is amended to read as follows:

"SEC. 5091. IMPOSITION AND RATE OF TAX.

"(a) GENERAL RULE.—Every brewer shall pay a tax of $1,000 per year in respect of each brewery.

"(b) REDUCED RATES FOR SMALL BREWERS.—Rules similar to the rules of section 5081(b) shall apply for purposes of subsection (a)."

(b) WHOLESALE DEALERS IN LIQUORS AND BEER.—

(1) LIQUORS.—Subsection (a) of section 5111 (relating to imposition and rate of tax on wholesale dealers) is amended by striking out "$255" and inserting in lieu thereof "$500".

(2) BEER.—Subsection (b) of section 5111 is amended by striking out "$123" and inserting in lieu thereof "$500".

(c) RETAIL DEALERS IN LIQUORS AND BEER.—

(1) LIQUORS.—Subsection (a) of section 5121 (relating to imposition and rate of tax on retail dealers) is amended by striking out "$54" and inserting in lieu thereof "$250".

(2) BEER.—Subsection (b) of section 5121 is amended by striking out "$24" and inserting in lieu thereof "$250".

(3) REPEAL OF TAX ON LIMITED RETAIL DEALERS.—Subsection (c) of section 5121 is hereby repealed.

(d) TAX ON NONBEVERAGE DOMESTIC DRAWBACK.—Subsection (b) of section 5131 (relating to eligibility and rate of tax) is amended to read as follows:

"(b) RATE OF TAX.—The special tax imposed by subsection (a) shall be $500 per year."

(e) TAX ON INDUSTRIAL USE OF DISTILLED SPIRITS.—

(1) IN GENERAL.—Subchapter D of chapter 51 (relating to industrial use of distilled spirits) is amended by adding at the end thereof the following new section:

"SEC. 5276. OCCUPATIONAL TAX.

"(a) GENERAL RULE.—A permit issued under section 5271 shall not be valid with respect to acts conducted at any place unless the person holding such permit pays a special tax of $250 with respect to such place.

"(b) CERTAIN OCCUPATIONAL TAX RULES TO APPLY.—Rules similar to the rules of subpart G of part II of subchapter A shall apply for purposes of this section."

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end thereof the following new item:

"Sec. 5276. Occupational tax."

(f) TOBACCO.—

(1) IN GENERAL.—Chapter 52 (relating to cigars, cigarettes, smokeless tobacco and cigarette papers and tubes) is amended by redesignating subchapters D, E, and F as subchapters E, F, and G, respectively, and by inserting after subchapter C the following new subchapter:

"Subchapter D—Occupational Tax

"Sec. 5731. Imposition and rate of tax.

"SEC. 5731. IMPOSITION AND RATE OF TAX.

"(a) GENERAL RULE.—Every person engaged in business as—

"(1) a manufacturer of tobacco products,

"(2) a manufacturer of cigarette papers and tubes, or

"(3) an export warehouse proprietor,

shall pay a tax of $1,000 per year in respect of each premises at which such business is carried on.

"(b) REDUCED RATES FOR SMALL PROPRIETORS.—

"(1) IN GENERAL.—Subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) CONTROLLED GROUP RULES.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) CERTAIN RULES TO APPLY.—For purposes of paragraph (1), rules similar to the

rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply.

"(c) CERTAIN OCCUPATIONAL TAX RULES TO APPLY.—Rules similar to the rules of subpart G of part II of subchapter A of chapter 51 shall apply for purposes of this section.

"(d) PENALTY FOR FAILURE TO REGISTER.—Any person engaged in a business referred to in subsection (a) who willfully fails to pay the tax imposed by subsection (a) shall be fined not more than $5,000, or imprisoned not more than 2 years, or both, for each such offense."

(2) CLERICAL AMENDMENT.—The table of subchapters for chapter 52 is amended by redesignating the items relating to subchapters D, E, and F as items relating to subchapters E, F, and G, respectively, and by inserting after the item relating to subchapter C the following new item:

"Subchapter D. Occupational tax."

(g) FIREARMS.—

(1) IN GENERAL.—Section 5801 (relating to occupational taxes) is amended to read as follows:

"SEC. 5801. IMPOSITION OF TAX.

"(a) GENERAL RULE.—On 1st engaging in business and thereafter on or before July 1 of each year, every importer, manufacturer, and dealer in firearms shall pay a special (occupational) tax for each place of business at the following rates:

"(1) Importers and manufacturers: $1,000 a year or fraction thereof.

"(2) Dealers: $500 a year or fraction thereof.

"(b) REDUCED RATES OF TAX FOR SMALL IMPORTERS AND MANUFACTURERS.—

"(1) IN GENERAL.—Paragraph (1) of subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) CONTROLLED GROUP RULES.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) CERTAIN RULES TO APPLY.—For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply."

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter A of chapter 53 is amended by striking out the item relating to section 5801 and inserting in lieu thereof the following new item:

"Sec. 5801. Imposition of tax."

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1988.

(2) ALL TAXPAYERS TREATED AS COMMENCING IN BUSINESS ON JANUARY 1, 1988.—

(A) IN GENERAL.—Any person engaged on January 1, 1988, in any trade or business which is subject to an occupational tax shall be treated for purposes of such tax as having first engaged in such trade or business on such date.

(B) LIMITATION ON AMOUNT OF TAX.—In the case of a taxpayer who paid an occupational tax in respect of any premises for any taxable period which began before January 1, 1988, and includes such date, the amount of the occupational tax imposed by reason of subparagraph (A) in respect of such premises shall not exceed an amount equal to 1/2 the excess (if any) of—

(i) the rate of such tax as in effect on January 1, 1988, over

(ii) the rate of such tax as in effect on December 31, 1987.

(C) OCCUPATIONAL TAX.—For purposes of this paragraph, the term "occupational tax" means any tax imposed under part II of subchapter A of chapter 51, section 5276, section 5731, or section 5801 of the Internal Revenue Code of 1986 (as amended by this section).

(3) DUE DATE OF TAX.—Any amount of tax due on January 1, 1988, by reason of the amendments made by this section, shall be due on April 1, 1988.

SEC. 4597. CUSTOMS USER FEES.

(a) FEES TREATED AS OFFSETTING RECEIPTS.—

(1) Subsection (f) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(A) by inserting "as offsetting receipts" after "deposited" in paragraph (1),

(B) by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:

"(2)(A) The Secretary of the Treasury is authorized and directed to pay out of the Customs User Fee Account all salaries and expenses of the United States Customs Service that are incurred in conducting commercial operations.

"(B) The authority to make payments under subparagraph (A) during any fiscal year (other than payments described in subparagraph (C)) shall be subject to such dollar limitations as are provided in any law making appropriations for such fiscal year. Payments may be made under subparagraph (A) during a fiscal year only if a dollar limitation on the total amount of payments that may be made under subparagraph (A) during such fiscal year (other than payments described in subparagraph (C)) is provided by a law making appropriations for such fiscal year.

"(C) Any dollar limitation described in subparagraph (B) shall not apply to any payments made out of the Customs User Fee Account for expenses incurred by the Secretary of the Treasury in providing overtime customs inspectional services for which the recipient of such services is not required to reimburse the Secretary of the Treasury, and such payments shall not be taken into account in applying such a limitation.

"(D) All funds in the Customs User Fee Account shall only be available for the salaries and expenses of the United States Customs Service incurred in conducting commercial operations.", and

(C) by redesignating paragraph (4) as paragraph (3).

(b) ADJUSTMENT OF MERCHANDISE PROCESSING FEE.—

(1) Paragraph (10) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(10)) is amended to read as follows:

"(10) For the processing of any merchandise (other than an article described in subparagraph (A), (B), or (C) of paragraph (9)) that is formally entered, or withdrawn from warehouse, for consumption during any fiscal year beginning after September 30, 1988, a fee at a rate equal to the lesser of—

"(A) 0.17 percent ad valorem, or

"(B) an ad valorem rate which the Secretary of the Treasury estimates will provide a total amount of receipts during the fiscal year equal to the amount of the dollar limitation authorized under section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 on the total amount of payments that may be made under subsection (f)(2)(A) of this section during the fiscal year (other than payments described in subsection (f)(2)(C) of this section), reduced by the sum of—

"(i) the excess, if any, of—

"(I) the amount of such limitation for the fiscal year, over

"(II) the amount of the dollar limitation imposed by any law making appropriations for the fiscal year on the total amount of payments which may be made under subsection (f)(2)(A) during the fiscal year (other than payments described in subsection (f)(2)(C) of this section), plus

"(ii) the amount of an estimate made by the Secretary of the Treasury of the amount of funds that—

"(I) will be in the Customs User Fee Account at the beginning of the fiscal year, and

"(II) will not be used to make payments described in subsection (f)(2)(C) of this section, plus

"(iii) the amount of an estimate made by the Secretary of the Treasury of the amount of receipts from fees imposed by any paragraph of this subsection other than this paragraph that—

"(I) will be deposited in to the Customs User Fee Account during the fiscal year, and

"(II) will not be used to make payments described in subsection (f)(2)(C) of this section.

If no authorization is provided under section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 for the amount of the dollar limitation that may be imposed on the total amount of payments under subsection (f)(2)(A) of this section during the fiscal year (other than payments described in subsection (f)(2)(C) of this section), the rate of the fee imposed under this paragraph for the fiscal year shall be 0.17 percent ad valorem.".

(2) Subparagraph (B) of section 13031(b)(8) of such Act (19 U.S.C. 58c(b)(8)(B)) is amended—

(A) by striking out "on which any funds are appropriated to the United States Customs Service for salaries or expenses incurred in conducting commercial operations" in clause (i) and inserting in lieu thereof "of enactment of any law making appropriations for a fiscal year that provides a dollar limitation on the total amount of payments that may be made under subsection (f)(2)(A) during the fiscal year (other than payments described in subsection (f)(2)(C))", and

(B) by striking out "an appropriation to the United States Customs Service if the funds appropriated" in clause (ii) and inserting in lieu thereof "a law described in clause (i) if the funds appropriated by such law".

(c) FEE IMPOSED ON FOREIGN CONTENT OF CERTAIN SCHEDULE 8 ARTICLES.—

(1) Subparagraph (A) of section 13031(a)(9) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c) is amended to read as follows:

"(A) provided for under any item in schedule 8 of the Tariff Schedules of the United States except item 806.30 or 807.00,".

(2) Subparagraph (A) of section 13031(b)(8) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c) is amended—

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

(ii) by striking out the period at the end of clause (ii) and inserting in lieu thereof a semicolon; and

(iii) by adding at the end thereof the following:

"(iii) in the case of merchandise classified under item 806.30 of the Tariff Schedules of the United States, be applied to the value of the foreign repairs or alterations to the merchandise; and

"(iv) in the case of merchandise classified under item 807.00 of such Schedules, be applied to the full value of the merchandise, less the cost or value of the component United States products.

With respect to merchandise that is classified under item 806.30 or 807.00 of such Schedules and is duty-free, the Secretary may collect the fee charged on the processing of the merchandise under subsection (a)(10) on the basis of aggregate data derived from financial and manufacturing reports used by the importer in the normal course of business, rather than on the basis of entry-by-entry accounting.".

(d) PROVISION OF CUSTOMS SERVICES AT FOREIGN TRADE ZONES AND BONDED WAREHOUSES.—Paragraph (4) of section 13031(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(4)) is amended to read as follows:

"(4) Notwithstanding any other provision of law (other than paragraph (2)), during any period when fees are authorized under subsection (a), no charges, other than such fees, may be collected—

"(A) for any—

"(i) cargo inspection, clearance, or other customs activity, expense, or service performed (regardless whether performed outside of normal business hours on an overtime basis), or

"(ii) customs personnel provided,

in connection with the arrival or departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, in the United States; or

"(B) in connection with—

"(i) the activation or operation (including Customs Service supervision) of any foreign trade zone or subzone established under the Act of June 18, 1934 (commonly known as the Foreign Trade Zones Act, 19 U.S.C. 81a et seq.); or

"(ii) the designation or operation (including Customs Service supervision) of any bonded warehouse under section 555 of the Tariff Act of 1930 (19 U.S.C. 1555).

(e) EXTENSION OF THE CUSTOMS USER FEES.—Paragraph (3) of section 13031(j) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c, note) is amended by striking out "1989" and inserting in lieu thereof "1990".

(f) EFFECTIVE DATES.—

(1) Except as otherwise provided under this subsection, the amendments made by this section shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date that is 15 days after the date of enactment of this Act.

(2) The amendments made by subsection (a) shall take effect on October 1, 1990.

(3) The amendments made by subsection (b) shall take effect on October 1, 1988.

PART XI—DEBT COLLECTION

SEC. 4601. 3-YEAR EXTENSION OF PROVISIONS RELATING TO COLLECTION OF NON-TAX DEBTS OWED TO FEDERAL AGENCIES.

(a) GENERAL RULE.—Subsection (c) of section 2653 of the Deficit Reduction Act of 1984 is amended by striking out "January 1, 1988" and inserting in lieu thereof "January 1, 1991".

(b) CLARIFICATION OF CONGRESSIONAL INTENT AS TO SCOPE OF PROVISION.—

(1) Nothing in the amendments made by section 2653 of the Deficit Reduction Act of 1984 shall be construed as exempting debts of corporations or any other category of persons from the application of such amendments.

(2) It is the intent of the Congress that, to the extent practicable, the amendments made by section 2653 of the Deficit Reduction Act of 1984 shall extend to all Federal agencies (as defined in the amendments made by such section).

(3) The Secretary of the Treasury shall issue regulations to carry out the purposes of this subsection.

(c) STUDY BY THE GENERAL ACCOUNTING OFFICE.—The Comptroller General of the United States, in consultation with the Secretary of the Treasury or his delegate, shall conduct a study of the operation and effectiveness of the amendments made by section 2653 of the Deficit Reduction Act of 1984. The study shall compile and evaluate information on the effect of those amendments on voluntary compliance with the income tax laws. Not later than April 1, 1989, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report of the study conducted under this subsection, together with such recommendations as he may deem advisable.

PART XII—ESTATE TAX PROVISIONS RELATING TO EMPLOYEE STOCK OWNERSHIP

SEC. 4611. CONGRESSIONAL CLARIFICATION OF ESTATE TAX DEDUCTION FOR SALES OF EMPLOYER SECURITIES.

(a) INTENT OF CONGRESS IN ENACTING SECTION 2057 OF THE INTERNAL REVENUE CODE OF 1986.—Section 2057 (relating to sales of employer securities to employee stock ownership plans or worker-owned cooperatives) is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and by inserting after subsection (c) the following new subsection:

"(d) QUALIFIED PROCEEDS FROM QUALIFIED SALES.—

"(1) IN GENERAL.—For purposes of this section, the proceeds of a sale of employer securities by an executor to an employee stock ownership plan or an eligible worker-owned cooperative shall not be treated as qualified proceeds from a qualified sale unless—

"(A) the decedent directly owned the securities immediately before death, and

"(B) after the sale, the employer securities—

"(i) are allocated to participants, or

"(ii) are held for future allocation in connection with—

"(I) an exempt loan under the rules of section 4975, or

"(II) a transfer of assets under the rules of section 4980(c)(3).

"(2) NO SUBSTITUTION PERMITTED.—For purposes of paragraph (1)(B), except in the case of a bona fide business transaction (e.g., a substitution of employer securities in connection with a merger of employers), employer securities shall not be treated as allocated or held for future allocation to the extent that such securities are allocated or held for future allocation in substitution of other employer securities that had been allocated or held for future allocation."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the amendments made by section 1172 of the Tax Reform Act of 1986.

SEC. 4612. MODIFICATIONS OF ESTATE TAX DEDUCTION FOR SALE OF EMPLOYER SECURITIES.

(a) IN GENERAL.—Section 2057 (relating to estate tax deduction for sales of employer securities to employee stock ownership plans or worker-owned cooperatives) is amended to read as follows:

"SEC. 2057. SALES OF EMPLOYER SECURITIES TO EMPLOYEE STOCK OWNERSHIP PLANS OR WORKER-OWNED COOPERATIVES.

"(a) GENERAL RULE.—For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate an amount equal to 50 percent of the proceeds of any sale of any qualified employer securities to—

"(1) an employee stock ownership plan, or

"(2) an eligible worker-owned cooperative.

"(b) LIMITATIONS.—

"(1) MAXIMUM REDUCTION IN TAX LIABILITY.—The amount allowable as a deduction under subsection (a) shall not exceed the amount which would result in an aggregate reduction in the tax imposed by section 2001 (determined without regard to any credit allowable against such tax) equal to $750,000.

"(2) DEDUCTION SHALL NOT EXCEED 50 PERCENT OF TAXABLE ESTATE.—The amount of the deduction allowable under subsection (a) shall not exceed 50 percent of the taxable estate (determined without regard to this section).

"(c) LIMITATIONS ON PROCEEDS WHICH MAY BE TAKEN INTO ACCOUNT.—

"(1) DISPOSITIONS BY PLAN OR COOPERATIVE WITHIN 1 YEAR OF SALE.—

"(A) IN GENERAL.—Proceeds from a sale which are taken into account under subsection (a) shall be reduced (but not below zero) by the net sale amount.

"(B) NET SALE AMOUNT.—For purposes of subparagraph (A), the term 'net sale amount' means the excess (if any) of—

"(i) the proceeds of the plan or cooperative from the disposition of employer securities during the 1-year period immediately preceding such sale, over

"(ii) the cost of employer securities purchased by such plan or cooperative during such 1-year period.

"(C) EXCEPTIONS.—For purposes of subparagraph (B)(i), there shall not be taken into account any proceeds of a plan or cooperative from a disposition described in section 4978A(e).

"(D) AGGREGATION RULES.—For purposes of this paragraph, all employee stock ownership plans maintained by an employer shall be treated as 1 plan.

"(2) SECURITIES MUST BE ACQUIRED BY PLAN FROM ASSETS WHICH ARE NOT TRANSFERRED ASSETS.—

"(A) IN GENERAL.—Proceeds from a sale shall not be taken into account under subsection (a) to the extent that such proceeds (as reduced under paragraph (1)) are attributable to transferred assets. For purposes of the preceding sentence, all assets of a plan or cooperative (other than qualified employer securities) shall be treated as first acquired out of transferred assets.

"(B) TRANSFERRED ASSETS.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The term 'transferred assets' means assets of an employee stock ownership plan which—

"(I) are attributable to assets held by a plan exempt from tax under section 501(a) and meeting the requirements of section 401(a) (other than an employee stock ownership plan of the employer), or

"(II) were held by the plan when it was not an employee stock ownership plan.

"(ii) EXCEPTION FOR ASSETS HELD ON FEBRUARY 27, 1987.—The term 'transferred assets' shall not include any asset held by the em-

ployee stock ownership plan on February 27, 1987.

"(iii) SECRETARIAL AUTHORITY TO WAIVE TREATMENT AS TRANSFERRED ASSET.—The Secretary may provide that assets or a class of assets shall not be treated as transferred assets if the Secretary finds such treatment is not necessary to carry out the purposes of this paragraph.

"(3) OTHER PROCEEDS.—The following proceeds shall not be taken into account under subsection (a):

"(A) PROCEEDS FROM SALE AFTER DUE DATE FOR RETURN.—Any proceeds from a sale which occurs after the date on which the return of the tax imposed by section 2001 is required to be filed (determined by taking into account any extension of time for filing).

"(B) PROCEEDS FROM SALE OF CERTAIN SECURITIES.—Any proceeds from a sale of employer securities which were received by the decedent—

"(i) in a distribution from a plan exempt from tax under section 501(a) and meeting the requirements of section 401(a), or

"(ii) as a transfer pursuant to an option or other right to acquire stock to which section 83, 422, 422A, 423, or 424 applies.

Any employer security the basis of which is determined by reference to any employer security described in the preceding sentence shall be treated as an employer security to which this subparagraph applies.

"(d) QUALIFIED EMPLOYER SECURITIES.—

"(1) IN GENERAL.—The term 'qualified employer securities' means employer securities—

"(A) which are issued by a domestic corporation which has no stock outstanding which is readily tradable on an established securities market,

"(B) which are includible in the gross estate of the decedent,

"(C) which would have been includible in the gross estate of the decedent if the decedent had died at any time during the shorter of—

"(i) the 5-year period ending on the date of death, or

"(ii) the period beginning on October 22, 1986, and ending on the date of death, and

"(D) with respect to which the executor elects the application of this section.

Subparagraph (C) shall not apply if the decedent died on or before October 22, 1986.

"(2) CERTAIN ASSETS HELD BY SPOUSE.—For purposes of paragraph (1)(C), any employer security which would have been includible in the gross estate of the spouse of a decedent during any period if the spouse had died during such period shall be treated as includible in the gross estate of the decedent during such period.

"(3) PERIODS DURING WHICH DECEDENT NOT AT RISK.—For purposes of paragraph (1)(C), employer securities shall not be treated as includible in the gross estate of the decedent during any period described in section 246(c)(4).

"(e) WRITTEN STATEMENT REQUIRED.—

"(1) IN GENERAL.—No deduction shall be allowed under subsection (a) unless the executor of the estate of the decedent files with the Secretary the statement described in paragraph (2).

"(2) STATEMENT.—A statement is described in this paragraph if it is a verified written statement—

"(A) which is made by—

"(i) the employer whose employees are covered by the employee stock ownership plan, or

"(ii) any authorized officer of the eligible worker-owned cooperative, and

"(B) which—

"(i) acknowledges that the sale of employer securities to the plan or cooperative is a sale to which sections 4978A and 4979A apply, and

"(ii) certifies—

"(I) the net sale amount for purposes of subsection (c)(1), and

"(II) the amount of assets which are not transferred assets for purposes of subsection (c)(2).

"(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) EMPLOYER SECURITIES.—The term 'employer securities' has the meaning given such term by section 409(1).

"(2) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' means—

"(A) a tax credit employee stock ownership plan (within the meaning of section 409(a)), or

"(B) a plan described in section 4975(e)(7).

"(3) ELIGIBLE WORKER-OWNED COOPERATIVE.—The term 'eligible worker-owned cooperative' has the meaning given such term by section 1042(c).

"(4) EMPLOYER.—Except to the extent provided in regulations, the term 'employer' includes any person treated as an employer under subsections (b), (c), (m), and (o) of section 414.

"(g) TERMINATION.—This section shall not apply to any sale after December 31, 1991."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to sales after February 27, 1987.

(2) PROVISIONS TAKING EFFECT AS IF INCLUDED IN THE TAX REFORM ACT OF 1986.—The following provisions shall take effect as if included in the amendments made by section 1172 of the Tax Reform Act of 1986:

(A) Section 2057(f)(2) of the Internal Revenue Code of 1986, as added by this section.

(B) The repeal of the requirement that a sale be made by the executor of an estate to qualify for purposes of section 2057 of such Code.

(3) DIRECT OWNERSHIP REQUIREMENT.—If the requirements of section 2057(d)(1)(B) of such Code (as modified by section 2057(d)(2) of such Code), as in effect after the amendments made by this section, are met with respect to any employer securities sold after October 22, 1986, and before February 28, 1987, such securities shall be treated as having been directly owned by the decedent for purposes of section 2057 of such Code, as in effect before such amendments.

(4) REDUCTION FOR SALES ON OR BEFORE FEBRUARY 26, 1987.—In applying the limitations of subsection (b) of section 2057 of such Code to sales after February 27, 1987, there shall be taken into account sales on or before February 27, 1987, to which section 2057 of such Code applied.

SEC. 4613. EXCISE TAXES ON PLANS OR COOPERATIVES DISPOSING OF EMPLOYER SECURITIES FOR WHICH ESTATE TAX DEDUCTION WAS ALLOWED.

(a) IN GENERAL.—Chapter 43 (relating to excise taxes on qualified pension, etc., plans) is amended by inserting after section 4978 the following new section:

"SEC. 4978A. TAX ON CERTAIN DISPOSITIONS OF EMPLOYER SECURITIES TO WHICH SECTION 2057 APPLIED.

"(a) IMPOSITION OF TAX.—In the case of a taxable event involving qualified employer securities held by an employee stock ownership plan or eligible worker-owned cooperative, there is hereby imposed a tax equal to the amount determined under subsection (b).

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be equal to 30 percent of—

"(A) the amount realized on the disposition in the case of a taxable event described in paragraph (1) or (2) of subsection (c), or

"(B) the amount repaid on the loan in the case of a taxable event described in paragraph (3) of subsection (c).

"(2) DISPOSITIONS OTHER THAN SALES OR EXCHANGES.—For purposes of paragraph (1), in the case of a disposition of employer securities which is not a sale or exchange, the amount realized on such disposition shall be the fair market value of such employer securities at the time of disposition.

"(c) TAXABLE EVENT.—For purposes of this section, the term 'taxable event' means the following:

"(1) DISPOSITION WITHIN 3 YEARS OF ACQUISITION.—Any disposition of employer securities by an employee stock ownership plan or eligible worker-owned cooperative within 3 years after such plan or cooperative acquired qualified employer securities.

"(2) STOCKS DISPOSED OF BEFORE ALLOCATION.—Any disposition of qualified employer securities to which paragraph (1) does not apply if—

"(A) such disposition occurs before such securities are allocated to accounts of participants or their beneficiaries, and

"(B) the proceeds from such disposition are not so allocated.

"(3) USE OF ASSETS TO REPAY ACQUISITION LOANS.—The payment by an employee stock ownership plan of any portion of any loan used to acquire employer securities from transferred assets (within the meaning of section 2057(c)(2)(B)).

"(d) ORDERING RULES.—For purposes of this section and section 4978, any disposition of employer securities shall be treated as having been made in the following order:

"(1) First, from qualified employer securities acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

"(2) Second, from qualified employer securities acquired before such 3-year period unless such securities (or the proceeds from such disposition) have been allocated to accounts of participants or their beneficiaries.

"(3) Third, from qualified securities (within the meaning of section 4978(e)(2)) to which section 1042 applied acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

"(4) Finally, from any other employer securities. In the case of a disposition to which section 4978(d) or subsection (e) applies, the disposition of employer securities shall be treated as having been made in the opposite order of the preceding sentence.

"(e) SECTION NOT TO APPLY TO CERTAIN DISPOSITIONS.—

"(1) IN GENERAL.—This section shall not apply to any disposition described in paragraph (1) or (3) of section 4978(d).

"(2) CERTAIN REORGANIZATIONS.—For purposes of this section, any exchange of qualified employer securities for employer securities of another corporation in any reorganization described in section 368(a)(1) shall not be treated as a disposition, but the employer securities which were received shall be treated—

"(A) as qualified employer securities of the plan or cooperative, and

"(B) as having been held by the plan or cooperative during the period the qualified employer securities were held.

"(3) DISPOSITION TO MEET DIVERSIFICATION REQUIREMENTS.—Any disposition which is made to meet the requirements of section 401(a)(28) shall not be treated as a disposition.

"(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) TERMS USED IN SECTION 2057.—Any term used in this section which is used in section 2057 shall have the meaning given such term by section 2057.

"(2) QUALIFIED EMPLOYER SECURITIES.—The term 'qualified employer securities' has the meaning given such term by section 2057, except that such term shall include employer securities sold before February 27, 1987, for which a deduction was allowed under section 2057.

"(3) DISPOSITION.—The term 'disposition' includes any distribution.

"(4) LIABILITY FOR PAYMENT OF TAXES.—The tax imposed by this section shall be paid by—

"(A) the employer, or

"(B) the eligible worker-owned cooperative, which made the written statement described in section 2057(e)."

(b) CONFORMING AMENDMENTS.—

(1) Section 4978(b)(2) is amended by striking out the parenthetical and inserting in lieu thereof "(determined as if such securities were disposed of in the order described in section 4978A(e))".

(2) The table of sections for chapter 43 is amended by inserting after the item relating to section 4978 the following new item:

"Sec. 4978A. Tax on certain dispositions of employer securities to which section 2057 applied."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable events (within the meaning of section 4978A(c) of the Internal Revenue Code of 1986 occurring after February 27, 1987.

TITLE V—CIVIL SERVICE AND GOVERNMENTAL AFFAIRS GENERALLY

SEC. 5001. PAY ADJUSTMENTS DURING FISCAL YEARS 1988, 1989, AND 1990.

(a) ADJUSTMENTS FOR EMPLOYEES UNDER STATUTORY PAY SYSTEMS.—

(1) ADJUSTMENTS UNDER TITLE 5, UNITED STATES CODE.—Notwithstanding any other provision of law, in fiscal year 1988, the overall percentage of adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule and in the rates of pay under the other statutory pay systems shall be an increase of 2 percent.

(2) ADJUSTMENTS FOR UNIFORM SERVICES.—(A) Section 601 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 is repealed.

(B) The table of contents of such Act is amended by striking out the following:

"Sec. 601. Military pay raise for fiscal year 1988.".

(3) CERTAIN STATUTORY REQUIREMENTS TO REMAIN IN EFFECT.—The provisions of paragraph (1) may not be construed to suspend the requirements of section 5305 of title 5; United States Code, with respect to fiscal years 1989 and 1990.

(4) UNIFORM ADJUSTMENTS; DELAYED EFFECTIVE DATES.—(A) Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage and shall take effect as of the beginning of the first applicable pay period beginning on or after January 1 of the fiscal year involved.

(B) Notwithstanding any other provision of law, in fiscal years 1989 and 1990, any percentage of adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule and in the rates of pay under the other statutory pay systems shall take effect as of the beginning of the first applicable pay period beginning on or after January 1 of the fiscal year involved.

(b) CERTAIN PAY ADJUSTMENTS NOT APPLICABLE TO MEMBERS OF CONGRESS.—

(1) ADJUSTMENTS INAPPLICABLE TO MEMBERS OF CONGRESS.—Notwithstanding any adjustment in rates of pay made pursuant to section 5305 of title 5, United States Code, or the provisions of subsection (a) of this section, the provisions of section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U. S. C. 31(2)) shall not apply in the rate of pay of any member of Congress (as described in subparagraph (A), (B), and (C) of section 601(a)(1) of such Act) during any pay period occurring in the fiscal year ending September 30, 1988.

(2) INCREASES IN ADJUSTMENTS NOT APPLICABLE RETROACTIVELY.—No Member of Congress shall receive an increase in a rate of pay after September 30, 1988, based on any increase by an adjustment such Member would have received but for the provisions of paragraph (1), unless such increase is provided pursuant to a law enacted after the date of enactment of this Act.

(c) ADJUSTMENTS FOR PREVAILING RATE EMPLOYEES.—

(1) LIMITATION.—Notwithstanding any other provision of law, and except as otherwise provided in this subsection, in the case of a prevailing rate employee, the total adjustment to any wage schedule or rate applicable to such employee which is to become effective (determined without regard to paragraph (2) or any other similar provision of law delaying the effective date of any pay adjustment) during fiscal year 1988, shall not exceed the overall percentage adjustment described in paragraphs (1)(A) and (4) of subsection (a) (determined without taking into account any adjustment which, but for section 15201 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), section 613 of the joint resolution entitled "A Joint Resolution making continuing appropriations for the fiscal year 1987, and for other purposes" approved October 30, 1986 (Public Laws 99-500 and 99-591; 100 Stat. 3341-330), or any other similar provision of law, would have become effective in fiscal year 1987).

(2) DELAYED EFFECTIVE DATES.—Notwithstanding any other provision of law, any increase permitted by paragraph (1) which is scheduled to take effect during fiscal year 1988 (determined without regard to this paragraph, section 15201 of the Consolidated Omnibus Reconciliation Act of 1985 (Public Law 99-272), section 613 of the joint resolution entitled "A Joint Resolution making continuing appropriations for the fiscal year 1987, and for other purposes" approved October 30, 1986 (Public Laws 99-500 and 99-591; 100 Stat. 3341-330), or any other similar provision of law delaying the effective date of any pay adjustment) shall take effect as of the beginning of the first applicable pay period beginning at least 90 days after the date on which such increase would have taken effect if this paragraph (and any other such similar provision of law) had not been enacted.

(3) NEGOTIATED WAGE SCHEDULES.—Notwithstanding section 9(b) of Public Law 92-392 or section 704(b) of Public Law 95-454, paragraph (1) shall apply (in such manner as the Office of Personnel Management shall prescribe) to prevailing rate employees to whom such section 9(b) applies, except that paragraph (1) shall not apply to any increase in a wage schedule or rate which is required by the terms of a contract entered into before the date of the enactment of this title.

(4) RULE OF CONSTRUCTION.—Nothing in this subsection or any provision of law governing the use of appropriated funds for the payment of employees covered by this subsection during the period covered by paragraph (1) (or any part of such period) shall be construed to permit or require the payment to any such employee at a rate in excess of the rate that would be payable were this subsection, or such provision of law governing the use of appropriated funds, not in effect.

(5) EXCEPTIONS.—The Office of Personnel Management may make exceptions from the limitations imposed by paragraph (1), if the Office determines that such exceptions are necessary to ensure the recruitment or retention of well-qualified employees.

(c) DEFINITIONS.—For purposes of this section—

(1) the term "prevailing rate employee" means any employee described in section 5342(a)(2) of title 5, United States Code, and any employee covered by section 5348 of such title; and

(2) the term "statutory pay system" has the meaning given such term by section 5301(c) of title 5, United States Code.

SEC. 5002. CASH MANAGEMENT IMPROVEMENTS.

(a) SHORT TITLE.—This section may be cited as the "Cash Management Improvement Act of 1987".

(b) PURPOSE.—It is the purpose of this section to increase equity in the exchange of funds between the Federal Government and the States and to increase the efficiency of efforts to manage cash throughout the Government by providing additional procedures and incentives for cash management.

(c) DISBURSEMENT OBJECTIVES.—

(1) DISBURSEMENT OF FEDERAL FUNDS.—Subchapter II of chapter 37 of title 31, United States Code, is amended by adding at the end thereof the following new section:

"§ 3720B. Disbursement of Federal funds

"Each head of an executive agency (other than the Tennessee Valley Authority) shall, under such regulations as the Secretary of the Treasury shall prescribe, provide for the timely disbursement of Federal funds through cash, checks, electronic funds transfer, or any other means identified by the Secretary. The Secretary may collect from any executive agency which does not comply with the preceding sentence a charge in an amount the Secretary determines to be the cost to the general fund of the Treasury caused by such noncompliance. The amounts of the charges paid under this subsection shall be deposited in the Treasury and credited as miscellaneous receipts. Any charge assessed by the Secretary under this section shall, to the maximum extent practicable, be paid out of appropriations available for agency operations and shall not reduce program funding levels.".

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 37 of such title is amended by inserting after the item relating to section 3720A the following new item:

"3720B. Disbursement of Federal funds.".

(3) REGULATIONS.—The Secretary of the Treasury shall prescribe regulations, including the regulations required under section 3720B of title 31, United States Code (as added by subsection (c) of this section) to ensure the full implementation of such section 3720B by October 1, 1988.

(d) PAYMENT OF INTEREST.—

(1) DEFINITIONAL AMENDMENTS.—Section 6501 of title 31, United States Code, is amended—

(A) by redesignating clauses (7), (8), and (9) as clauses (8), (9), and (10), respectively;

(B) by inserting after clause (6) the following new clause:

"(7) 'Secretary' means the Secretary of the Treasury."; and

(C) by striking out clause (9) (as redesignated by subparagraph (A) of this paragraph) and inserting in lieu thereof the following:

"(9) 'State' means a State of the United States, the District of Columbia, a territory or possession of the United States, and an agency, instrumentality, or fiscal agent of a State but does not mean a local government of a State.".

(2) INTERGOVERNMENTAL FINANCING.—(A) Section 6503 of title 31, United States Code, is amended to read as follows:

"§ 6503. Intergovernmental financing

"(a) Consistent with program purposes and with regulations of the Secretary, and by means mutually agreed upon by the Secretary and a State, the head of an executive agency carrying out a program shall schedule the transfer of funds to minimize the time elapsing between transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means by a State.

"(b) Consistent with program purposes and with regulations of the Secretary, and by means mutually agreed upon by the Secretary and a State, a State shall minimize the time elapsing between transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means for program purposes.

"(c)(1) The Secretary shall issue regulations that will require a State to pay interest on funds from the time that funds are deposited to the State's account until the time that funds are paid out in order to redeem checks or warrants or make payments by other means for program purposes. Such interest shall be calculated at a rate equal to the average of the bond equivalent rates of 13-week Treasury bills auctioned during the period for which interest is calculated, as determined by the Secretary.

"(2) Amounts received as payment of interest under this subsection shall be deposited in the Treasury and credited as miscellaneous receipts, except as provided in paragraph (3) of this subsection.

"(3) If interest is paid under paragraph (1) of this subsection on funds paid to a State from a trust fund for which the Secretary of the Treasury is the trustee, or from the Unemployment Trust Fund, such interest shall be credited to such trust fund. If interest is paid under subsection (d) of this section as a result of a State disbursing its own funds for programs for which the Secretary of the Treasury is the trustee, or for the Unemployment Trust Fund, such interest shall be charged against such trust fund.

"(d) If a State disburses its own funds for program purposes in accordance with Federal law, regulation, or Federal-State agreement, the State shall be entitled to interest from the time when the State's funds are paid out to redeem checks or warrants, or make payments by other means, until the Federal funds are deposited to the State's bank account. The Secretary shall pay, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary for interest owed to a State under this subsection. Such interest shall be calculated, at a rate equal to the average of the bond equivalent rates of 13-week Treasury bills auctioned during the period for which interest is calculated, as determined by the Secretary.

"(e) The budget submitted by the President under section 1105 of this title for a fiscal year shall include a statement specifying, for the most recently completed fiscal year, amounts of interest paid to the Federal Government under subsection (c) of this section and payments of interest to States under subsection (d) of this section.

"(f) If a State receives refunds of funds, the State shall return those refunds to the executive agency administering the program or apply those funds to reduce the amount of funds owed to the State under such program. Interest earned on such refunds shall be considered when setting overall interest obligations between the State and the Federal Government as required by this section.

"(g) If the Federal Government makes a payment to a recipient under a Federal program, and a portion of the payment is an amount which the Federal Government is paying to such recipient on behalf of a State, such amount shall be considered to be a transfer of funds between the Federal Government and the State for purposes of this section.

"(h) A State may not be required by a law or regulation of the United States to deposit money received by it in a separate bank account. However, a State shall account for money made available to the State as United States Government money in the accounts of the State. The head of the State agency concerned shall make periodic authenticated reports to the head of the appropriate Federal executive agency on the status and the application of the money, the liabilities and obligations on hand, and other information required by the head of the executive agency. Records related to the money received by the State shall be made available to the head of the executive agency and the Comptroller General for auditing in accordance with chapter 75 of this title.

"(i) The Secretary shall prescribe the methods of payment of interest between the Federal Government and the States, including provisions for offsetting amounts owed by the respective parties. Such methods of payment shall provide for comparable treatment in manner, technique, and timing for both the States and the Federal Government.

"(j) The Inspector General of an executive agency, or an officer of an executive agency performing functions similar to an Inspector General, in the case of an agency in which an Inspector General has not been established by law, shall periodically conduct audits of the implementation of this section. Periodic audits of the implementation of this section shall also be conducted by the States within the scope of work performed under chapter 75 of this title.

"(k) Consistent with Federal program purposes and regulations of the Director of the Office of Management and Budget, the head of a Federal executive agency carrying out a program shall execute grant awards on a timely basis to assure the availability of funds to accomplish transfers in compliance with subsection (a) of this section.

"(l) In determining the amount to be paid by a State to the Federal Government under subsection (c) of this section, or to a State by the Federal Government under subsection (d) of this section, the Secretary shall consider costs incurred by the State determining the amount due.".

(B) The item relating to section 6503 in the chapter analysis for chapter 65 of title 31, United States Code, is amended to read as follows:

"6503. Intergovernmental financing.".

(3) APPLICATION OF AMENDMENTS.—

(A) Subject to subparagraph (B), the provisions of this section and the amendments made by this section shall apply to all Federal programs and shall supersede the provisions of any Federal law or regulation in effect on the date of enactment of this title.

(B) The provisions of subparagraph (A) shall apply only to programs and fund transfers involving those executive agencies that are subject to regulation by the Secretary of the Treasury under section 3720B of title 31, United States Code.

(e) IMPROVING THE COLLECTION AND DEPOSIT OF GOVERNMENT RECEIPTS THROUGH NATIONAL LOCKBOX SYSTEMS.—

(1) DEFINITIONS.—For purposes of this subsection—

(A) the term "executive agency" has the same meaning as in section 102 of title 31, United States Code;

(B) the term "lockbox system" means a system under which—

(i) persons owing payments to an executive agency transmit such payments to a locked post office box in offices of the United States Postal Service; and

(ii) such payments are collected from such box by a financial institution and are credited by such institution to the account of such agency without any specific action by such agency; and

(C) the term "Secretary" means the Secretary of the Treasury.

(2) STUDY.—The Secretary shall study and make recommendations concerning standards for the establishment of lockbox systems for executive agencies. In conducting such study, the Secretary shall—

(A) consider—

(i) the feasibility of establishing such systems;

(ii) the benefits and costs of establishing such systems; and

(iii) the needs of each executive agency for such a system;

(B) develop methods of internal controls and accounting by which the Government can assure that payments received through a lockbox system will be promptly and fully credited to the Treasury of the United States;

(C) develop criteria for the adoption of lockbox systems by executive agencies;

(D) analyze the feasibility and costs of operating lockbox systems through the Department of the Treasury, the Federal Reserve Board, or other appropriate executive agencies; and

(E) develop recommendations for the establishment of lockbox systems by executive agencies, with the cost of establishing and operating such systems paid by appropriated funds.

(3) REPORT.—Within one hundred eighty days after the date of enactment of this Act, the Secretary shall submit a report on the

study conducted under paragraph (2) to the President pro tempore of the Senate and the Speaker of the House of Representatives. The report shall describe the findings of the study and contain such recommendations as the Secretary considers appropriate.

(4) GUIDELINES.—Within ninety days after submitting the report required under paragraph (3), the Secretary shall prescribe guidelines which specify procedures to be used by executive agencies in determining whether to establish and operate lockbox systems.

(5) SUBMISSION OF REPORT TO THE SECRETARY.—Within ninety days after the Secretary prescribes guidelines under paragraph (4), the head of each executive agency shall submit to the Secretary a report describing the plans of such agency for the establishment of a lockbox system or specifying the reasons why such a system is not feasible or cost effective for such agency.

SEC. 5003. CONTRIBUTIONS BY THE UNITED STATES POSTAL SERVICE TO THE CIVIL SERVICE RETIREMENT AND DISABILITY FUND.

(a) DEPOSIT OF CERTAIN SAVINGS IN FUND.—

(1) FISCAL YEARS 1988 AND 1989.—From all funds available to the United States Postal Service in fiscal years 1988 and 1989, the Postal Service shall deposit (from the capital savings resulting from the implementation of the provisions of subsection (b)) into the Civil Service Retirement and Disability Fund established under section 8348 of title 5, United States Code—

(A) an amount of $402,000,000 in fiscal year 1988, in addition to any amount deposited pursuant to subsection (h) of such section; and

(B) an amount of $536,000,000 in fiscal year 1989, in addition to any amount deposited pursuant to subsection (h) of such section.

(2) CONTRIBUTIONS FOR COST-OF-LIVING ADJUSTMENTS.—Section 8348(h) of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(3) Notwithstanding any other provision of law, in addition to any payments into the Fund under the provisions of paragraphs (1) and (2), the United States Postal Service shall pay into the Fund, on a cash basis in each fiscal year, an amount equal to the actual cost of any adjustments made under the provisions of section 8340 of this title for any individual who becomes an annuitant by reason of retirement from the United States Postal Service on or after October 1, 1989.".

(b) CAPITAL SAVINGS FOR FISCAL YEARS 1988 AND 1989.—

(1) The United States Postal Service may not make any commitment or obligation to expend any monies deposited in the Postal Service Fund established under section 2003 of title 39, United States Code, for the capital investment program—

(A) in excess of $447,000,000 in fiscal year 1988;

(B) in excess of $1,995,000,000 in fiscal year 1989; and

(C) in excess of $2,304,000,000 in fiscal year 1990 (subject to the provisions of section 5004(c)(5)(B), if applicable).

(2) CAPITAL INVESTMENT PROGRAM.—For the purposes of paragraph (1) the term "capital investment program" shall include all investments in long-term assets and capital investment expenditures (including direct and indirect costs associated with such investments and expenditures, such as obligations through contracts), including but not limited to—

(A) modernization of capital facilities and vehicle fleet;

(B) automation of mail distribution functions, including retail operations and information systems; and

(C) all other capital expenditures approved by the Board of Governors or the duly authorized agents of the Board.

SEC. 5004. CONTRIBUTIONS BY THE UNITED STATES POSTAL SERVICE IN THE EMPLOYEES HEALTH BENEFITS FUND.

(a) CONTRIBUTIONS FOR ALL ANNUITANTS OF THE UNITED STATES POSTAL SERVICE.—Section 8906(g)(2) of title 5, United States Code, is amended by striking out "on or after October 1, 1986,".

(b) PAYMENTS FOR CONTRIBUTIONS IN FISCAL YEARS 1988 AND 1989.—

(1) PAYMENT LIMITATIONS.—Payments by the United States Postal Service made for contributions into the Employees Health Benefits Fund under section 8906(g)(2) of title 5, United States Code (as amended by subsection (a) of this section) in fiscal years 1988 and 1989 shall—

(A) be from all funds available to the United States Postal Service in each such fiscal year;

(B) be from funds representing savings to the United States Postal Service resulting from productivity improvements in each such fiscal year; and

(C) be paid into such Fund in each such fiscal year, without—

(i) increasing borrowing under section 2005 of title 39, United States Code;

(ii) increasing the operating budget of the United States Postal Service; or

(iii) increasing postal rates under chapter 36 of title 39, United States Code, for the purposes of financing such payment.

(2) PROVISIONS INAPPLICABLE TO CERTAIN ANNUITANTS.—The provisions of paragraph (1) shall not apply to the payment of contributions under section 8906(g)(2) of title 5, United States Code (as amended by subsection (a) of this section) for any individual who retires as an annuitant from the United States Postal Service on or after October 1, 1986.

(c) PRODUCTIVITY IMPROVEMENT PLANS, REPORTS, AND COMPLIANCE FOR FISCAL YEARS 1988 AND 1989.—

(1) PRODUCTIVITY IMPROVEMENT PLANS.—No later than March 1, 1988 for fiscal year 1988, and October 1, 1988 for fiscal year 1989, the United States Postal Service shall—

(A) formulate a productivity improvement plan specifically enumerating the methods by which the Postal Service shall make the payments required under paragraph (1) of subsection (b) and fulfill the conditions required under subparagraphs (A), (B), and (C) of such paragraph; and

(B) submit such plan to the President and the Committee on Governmental Affairs of the Senate and the Committee on the Post Office and Civil Service of the House of Representatives.

(2) INTERIM REPORT.—No later than July 15, 1988 for fiscal year 1988, and March 1, 1989 for fiscal year 1989, the United States Postal Service shall submit an interim report to the President and the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives on the status of meeting the guidelines and goals of the plans submitted under paragraph (1)(B), and any adjustments necessary to meet the requirements under the provisions of subsection (b)(1) of this section for each such fiscal year.

(3) PRELIMINARY AUDIT AND REPORT BY THE GENERAL ACCOUNTING OFFICE.—No later than September 1, 1988 for fiscal year 1988, and September 1, 1989 for fiscal year 1989, the General Accounting Office shall—

(A) conduct an audit of the plans and adjustments to the plans submitted by the United States Postal Service under paragraphs (1) and (2) of this subsection and determine the extent of compliance of the Postal Service with such plans and the requirements of subsection (b)(1) of this section; and

(B) submit a report of such audit and determinations to the President and the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives.

(4) DETERMINATION OF COMPLIANCE.—

(A) On October 31, 1988 for fiscal year 1988, and on October 31, 1989 for fiscal year 1989, the General Accounting Office shall—

(i) make a final audit and determination of whether the United States Postal Service is in compliance with the requirements of subsection (b)(1) of this section; and

(ii) submit a final report for each such fiscal year on such compliance to the President and the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives.

(B) Notwithstanding the provisions of section 2005(a) of title 39, United States Code, or any other provision of law, the United States Postal Service may not increase the net increase in the amount of obligations outstanding issued, under the provisions of such section, for purposes of defraying operating expenses of the Postal Service during the period beginning on October 1, 1988, through October 31, 1988.

(5) FISCAL YEARS 1988 AND 1989 COMPLIANCE PROVISIONS.—

(A)(i) Any portion of the payments made into the Employees Health Benefits Fund under paragraph (1) of subsection (b) of this section in fiscal year 1988, that is not in compliance with the provisions of subparagraphs (B) and (C) of such paragraph shall be paid from all funds available to the Postal Service.

(ii) An amount equal to any portion of the payments described under clause (i) shall—

(I) be an additional amount of savings included in the productivity improvement plan formulated for fiscal year 1989; and

(II) be achieved as an additional savings in fiscal year 1989 in order to be in compliance with the audit and determination by the General Accounting Office under paragraph (4) for fiscal year 1989.

(B) The limitation on the capital investment program for fiscal year 1990 under the provisions of section 5003(b)(1)(C) shall be further reduced, if applicable, by the amount necessary to achieve expenditure savings in fiscal year 1990 equal to—

(i) the amount of any portion of payments made into the Employees Health Benefit Fund for fiscal year 1989 pursuant to paragraph (1) of subsection (b) of this section, that is not in compliance with the provisions of subparagraphs (B) and (C) of such paragraph; and

(ii) any additional amount of savings which were not achieved as required by the provisions of subparagraph (A)(ii) of this paragraph.

TITLE VI—LABOR AND HUMAN RESOURCES

Subtitle A—Retirement Security Promotion

SEC. 6001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This subtitle may be cited as the "Retirement Security Promotion Act of 1987".

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

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Sec. 6001. Short title; table of contents.
Sec. 6002. Minimum benefit security level.
Sec. 6003. Asset withdrawals permitted from certain ongoing single-employer plans; related definitions.
Sec. 6004. Limitations on employer reversions upon plan termination.
Sec. 6005. Three-year amortization of underfunding of plans of controlled group upon distribution to employer from a terminated plan or upon certain transactions involving plan assets; tax-free transfers between certain single-employer plans in same controlled group.
Sec. 6006. Funding waivers.
Sec. 6007. Liability of members of controlled group for taxes on failure to meet minimum funding standards.
Sec. 6008. Increase in liabilities arising upon plan termination.
Sec. 6009. Amendments relating to section 4049 trust.
Sec. 6010. Single-employer plan benefit guaranty premiums.
Sec. 6011. Interest rate on accumulated contributions.
Sec. 6012. Increase in minimum funding standards.
Sec. 6013. Time for making contributions.
Sec. 6014. Study of event-contingent benefits.
Sec. 6015. Effective date.

SEC. 6002. MINIMUM BENEFIT SECURITY LEVEL.

(a) AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) is amended by adding at the end the following new paragraphs:

"(41) MINIMUM BENEFIT SECURITY LEVEL.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'minimum benefit security level' for a plan means the sum of—

"(i) the greater of—

"(I) an amount equal to the full funding limitation (within the meaning of section 302(c)(7)) with respect to such plan, using the projected unit credit funding method, or

"(II) 125 percent of the actuarial present value of all benefit liabilities under the plan, and

"(ii) the amount which would be required to be distributed from the plan under section 4044(d)(2)(A) if the plan terminated.

"(B) SPECIAL RULE FOR PLANS PROVIDING QUALIFIED EVENT-CONTINGENT BENEFITS.—

"(i) IN GENERAL.—In any case in which a plan provides a qualified event-contingent benefit, the term 'minimum benefit security level' for such plan means the lesser of—

"(I) the sum of 150 percent of the amount described in subparagraph (A)(i) (determined without regard to qualified event-contingent benefits for which the contingency has not occurred) plus the amount described in subparagraph (A)(ii), or

"(II) the amount which would be determined as the amount described in subparagraph (A) if all qualified event-contingent benefits of participants or beneficiaries under the plan, which have not occurred as of the time of the determination, occurred immediately before the determination.

"(ii) QUALIFIED EVENT-CONTINGENT BENEFIT.—For purposes of clause (i), the term 'qualified event-contingent benefit' means any subsidy or benefit which is contingent upon the occurrence of an event which,

"(I) has not occurred, and

"(II) does not constitute an event occurring solely with respect to a participant or beneficiary (such as the attainment of any age, disability, death, or the completion of any period of service).

"(C) INTEREST RATE ASSUMPTION.—The interest rate assumed for purposes of subparagraph (A)(i)(II) shall be—

"(i) the interest rate stated in the plan for purposes of determining single sum distributions, or

"(ii) if no interest rate is stated in the plan for such purposes, 120 percent of the applicable interest rate (within the meaning of section 203(e)(2)(B)).

"(D) REGULATIONS.—The Secretary of the Treasury may prescribe regulations to carry out the provisions of this paragraph. Any such regulations shall be prescribed in consultation with the Secretary.

"(42) BENEFIT LIABILITIES.—The term 'benefit liabilities' under a plan to any person means all benefits of such person under the plan (including benefits which are not protected under section 204(g)).".

(b) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 414 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

"(u) MINIMUM BENEFIT SECURITY LEVEL.—

"(1) IN GENERAL.—For purposes of this part, except as provided in paragraph (2), the term 'minimum benefit security level' with respect to a plan means the sum of—

"(A) the greater of—

"(i) an amount equal to the full funding limitation (within the meaning of section 412(c)(7)) with respect to such plan, using the projected unit credit funding method, or

"(ii) 125 percent of the actuarial present value of all benefit liabilities under the plan, and

"(B) the amount which would be required to be distributed from the plan under section 4044(d)(2)(A) of the Employee Retirement Income Security Act of 1974 if the plan terminated.

"(2) SPECIAL RULE FOR PLANS PROVIDING QUALIFIED EVENT-CONTINGENT BENEFITS.—

"(A) IN GENERAL.—For purposes of this part, in any case in which a plan provides a qualified event-contingent benefit, the term 'minimum benefit security level' means with respect to such plan the lesser of—

"(i) the sum of 150 percent of the amount described in paragraph (1)(A) (other than qualified event-contingent benefits) plus the amount described in paragraph (1)(B), or

"(ii) the amount which would be determined as the amount described in paragraph (1) if all qualified event-contingent benefits of participants or beneficiaries under the plan, which have not occurred as of the time of the determination, occurred immediately before the determination.

"(B) QUALIFIED EVENT-CONTINGENT BENEFIT.—For purposes of subparagraph (A), the term 'qualified event-contingent benefit' means any subsidy or benefit which—

"(i) is contingent upon the occurrence of an event which has not occurred, and

"(ii) does not constitute an event occurring solely with respect to a participant or beneficiary (such as the attainment of any age, disability, death, or the completion of any period of service).

"(3) INTEREST RATE ASSUMPTION.—The interest rate assumed for purposes of paragraph (1)(A)(ii) shall be—

"(A) the interest rate stated in the plan for purposes of determining single sum distributions, or

"(B) if no interest rate is stated in the plan for such purposes, 120 percent of the applicable interest rate (within the meaning of section 411(a)(11)(B)(ii)).

"(4) BENEFIT LIABILITIES.—For purposes of this subsection, the term 'benefit liabilities' under a plan to any person means all benefits of such person under the plan (including benefits which are not protected under section 411(d)(6)).

"(5) REGULATIONS.—The Secretary may prescribe regulations to carry out the provisions of this subsection. Any such regulations shall be prescribed in consultation with the Secretary of Labor.".

SEC. 6003. ASSET WITHDRAWALS PERMITTED FROM CERTAIN ONGOING SINGLE-EMPLOYER PLANS; RELATED DEFINITIONS.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended—

(A) by redesignating section 414 (29 U.S.C. 1114) as section 415; and

(B) by inserting after section 413 (29 U.S.C. 1113) the following new section:

"SEC. 414. ASSET WITHDRAWALS FROM CERTAIN ONGOING SINGLE-EMPLOYER PLANS.

"(a) IN GENERAL.—The requirements of this part shall not be treated as violated solely by reason of a withdrawal by the employer during any plan year of assets of an ongoing single-employer plan providing for the withdrawal of plan assets if—

"(1) the employer, and each member of a controlled group including the employer, has not terminated a plan described in section 4021 with assets insufficient to satisfy all benefit liabilities, except that this paragraph shall not apply in any case in which the participants of such earlier terminated plan and the corporation have been placed in a financial position that is not worse than that in which the participants would have been placed had the earlier plan terminated with sufficient assets to meet benefit liabilities, and

"(2) immediately after the withdrawal—

"(A) the current value of the assets in the plan from which the withdrawal is made is not less than the minimum benefit security level (as defined in section 3(41)) for such plan, and

"(B) the current value of the assets in each other single-employer plan (if any) which is maintained by the employer (or by any other person who is, at the time of the withdrawal, in the controlled group including the employer) is not less than the minimum benefit security level for such plan.

"(b) SPECIAL RULES FOR RECENTLY AMENDED PLANS AND FOR MERGERS, CONSOLIDATIONS, AND TRANSFERS OF PLAN ASSETS.—

"(1) IN GENERAL.—In determining the extent to which a plan provides for the withdrawal of plan assets by the employer for purposes of this section, any such provision, and any amendment increasing the amount which may be withdrawn, shall not be treated as effective before the end of the fifth calendar year following the date of the adoption of such provision or amendment.

"(2) TREATMENT OF PLANS AFTER MERGERS, CONSOLIDATIONS, AND TRANSFERS.—Except as

otherwise provided in regulations of the Secretary of the Treasury, in the case of a transaction described in section 208, paragraph (1) shall continue to apply separately with respect to the amount of any assets involved in such transaction.

"(3) EXCEPTION FOR CERTAIN EXISTING PLANS.—Paragraph (1) shall not apply with respect to any plan which provides on October 9, 1987, in accordance with section 4044(d) (as in effect on such date), for a distribution of plan assets to the employer upon plan termination.

"(c) RIGHT OF AFFECTED PARTIES TO ADVANCE NOTICE OF PLAN AMENDMENTS PERMITTING ASSET WITHDRAWAL.—A plan may not be amended so as to provide for the withdrawal of plan assets or an increase in the amount which may be withdrawn, in accordance with this section, unless the plan amendment is effective not earlier than 180 days after the employer has provided written notice of such amendment to all affected parties (within the meaning of section 3(46)).

"(d) ONGOING PLAN.—For purposes of this section, a plan is 'ongoing' to the extent that, under both title IV and section 411(d)(3) of the Internal Revenue Code of 1986, the plan is not treated as a terminated plan.

"(e) APPLICATION TO MULTIPLE-EMPLOYER PLANS.—The provisions of this section shall apply with respect to multiple-employer plans (within the meaning of section 3(44)) only to the extent provided in regulations prescribed by the Secretary of the Treasury in consultation with the Secretary.

"(f) REGULATIONS.—

"(1) SUBSECTIONS (a) AND (b).—The Secretary of the Treasury, in consultation with the Secretary, may promulgate such regulations as may be necessary under subsections (a) and (b).

"(2) SUBSECTION (c).—The Secretary may promulgate such regulations as may be necessary under subsection (c).".

(2) PLAN PROVISION MAY PROVIDE FOR ASSET WITHDRAWAL.—Part 4 of subtitle B of title I of such Act is amended—

(A) in section 402(c) (29 U.S.C. 1102(c)), by striking "or" at the end of paragraph (2), by striking "plan." in paragraph (3) and inserting "plan; or", and by adding at the end the following new paragraph:

"(4) that the employer may withdraw plan assets from the plan to the extent permitted under section 414.";

(B) in section 403(c)(1) (29 U.S.C. 1103(c)(1)), by inserting ", or under section 414 (relating to withdrawal of plan assets)" after "subsection (d),"; and

(C) in section 404(a)(1) (29 U.S.C. 1104(a)(1)), by inserting "414," after "403 (c) and (d),".

(3) 60-DAY NOTICE REQUIREMENT FOR PLAN ASSET WITHDRAWAL.—

(A) IN GENERAL.—Section 104 of such Act (29 U.S.C. 1024) is amended—

(i) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(ii) by inserting after subsection (b) the following new subsection:

"(c)(1) Not later than 60 days after the date of any withdrawal of plan assets by the employer pursuant to section 414, the employer maintaining the plan from which the withdrawal was made shall provide the Secretary, the Secretary of the Treasury, the administrator, and each employee organization representing participants in the plan a written notice of such withdrawal. Any such notice shall be maintained in the principal office of the administrator.

"(2) Such notice shall identify the plan from which the withdrawal was made, the amount of the withdrawal, a detailed accounting of assets held by the plan immediately before and immediately after the withdrawal, the benefit liabilities under the plan at the time of the withdrawal, the types of qualified event-contingent benefits (if any) under the plan, the amount of the benefit liabilities assumed as qualified event-contingent benefits, and a statement of all transactions described in section 208 involving the plan during the period commencing with the period of 2 calendar years preceding the withdrawal and ending with the date of the withdrawal.

"(3) Such notice shall include the name and identification of each other single-employer plan maintained by a person in the controlled group including the employer at the time of the withdrawal and the employer maintaining such plan, the current value of the assets of such plan and the present value of the benefit liabilities of such plan at the beginning and end of the last plan year preceding the withdrawal, and a listing of all transactions described in section 208 involving such plan during the 2-year period preceding the withdrawal.

"(4) Such notice shall include copies of all associated Internal Revenue Service filings required pursuant to section 6058 of the Internal Revenue Code of 1986 with respect to—

"(A) the plan from which the withdrawal was made,

"(B) each other single-employer plan maintained by the employer or any other person who was in a controlled group including the employer at the time of the withdrawal during the period commencing with the period of 2 calendar years preceding the withdrawal and ending with the date of the withdrawal, and

"(C) to the extent provided by regulation, each other single-employer plan maintained by the employer and each other person in the controlled group.

"(5) Such notice shall include a certification by an enrolled actuary (including supporting documentation) that the requirements of section 414(a) were met with respect to the withdrawal.

"(6) The Secretary may prescribe such additional reporting requirements as may be necessary to carry out the purpose of section 414 and other related provisions.".

(B) RIGHT TO EXAMINATION OF INFORMATION.—Section 104(b)(2) of such Act (29 U.S.C. 1024(b)(2)) is amended—

(i) by striking "description and" and inserting "description,";

(ii) by striking "report and" and inserting "report,"; and

(iii) by striking "operated" and inserting "operated, and any notice and certification provided pursuant to subsection (c)".

(C) PENALTY FOR FAILURE TO PROVIDE NOTICE.—Section 502(i) of such Act (29 U.S.C. 1132(i)) is amended—

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

(ii) by striking "subsection" in the last sentence and inserting "paragraph"; and

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

"(2) The Secretary may assess a civil penalty against any employer who fails to provide a notice as required under section 104(c). The amount of such penalty may not exceed the greater of—

"(A) $5,000 per day, or

"(B) one-tenth of 1 percent per day of the amount withdrawn,

for the period beginning with the date on which such failure first occurs and ending with the date on which such notice is so provided.".

(4) PERMITTED ASSET WITHDRAWALS CONSTITUTING AN EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 408(b) of such Act (29 U.S.C. 1108(b)) is amended by inserting after paragraph (11) the following:

"(12) A withdrawal of assets from the plan permitted under section 414.".

(5) DEFINITION OF SINGLE-EMPLOYER PLAN AND MULTIPLE EMPLOYER PLAN.—Section 3 of such Act (29 U.S.C. 1002) (as amended by section 6002(a) of this Act) is further amended by adding at the end the following new paragraphs:

"(43) SINGLE-EMPLOYER PLAN.—The term 'single-employer plan' means a defined benefit plan which is not a multiemployer plan.

"(44) MULTIPLE-EMPLOYER PLAN.—

"(A) IN GENERAL.—The term 'multiple-employer plan' means a single-employer plan which is maintained by more than one employer.

"(B) TREATMENT OF CONTROLLED GROUP.—For purposes of subparagraph (A), any 2 or more employers who are in the same controlled group shall be treated as a single employer.".

(6) DEFINITION OF CONTROLLED GROUP.—Section 3 of such Act (as amended by paragraph (5)) is further amended by adding at the end the following new paragraph:

"(44) CONTROLLED GROUP.—

"(A) IN GENERAL.—The term 'controlled group' means, in connection with any person, a group consisting of such person and all other persons under common control with such person.

"(B) COMMON CONTROL.—For purposes of subparagraph (A), the determination of whether two or more persons are under 'common control' shall be made under regulations prescribed by the Secretary of the Treasury under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986.".

(7) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act (29 U.S.C. 1001 note) is amended by striking the item relating to section 414 and inserting the following new items:

"Sec. 414. Asset withdrawals from certain ongoing single-employer plans.

"Sec. 415. Effective date.".

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Subsection (a) of section 401 of the Internal Revenue Code of 1986 (relating to requirements for qualification) is amended by inserting after paragraph (28) the following new paragraph:

"(29) WITHDRAWAL BY EMPLOYER OF PLAN ASSETS.—

"(A) IN GENERAL.—A trust forming a part of a defined benefit plan (other than a multiemployer plan) shall not be treated as failing to constitute a qualified trust under this section solely by reason of a withdrawal of plan assets by the employer permitted under section 4975(d)(16).

"(B) EFFECT OF CORRECTION OF WITHDRAWAL.—Notwithstanding subparagraph (A), in the event that the employer becomes subject to tax under section 4980A (relating to excise tax on certain withdrawals of plan assets) and corrects (as defined in section 4980A(d)(4)) such excess withdrawal within 90 days after the withdrawal giving rise to the tax, then the plan shall not fail to constitute a qualified trust under this section

solely by reason of the withdrawal, except to the extent inconsistent with the purposes of this paragraph, or as otherwise prescribed by the Secretary in regulations.".

(2) TREATMENT OF SECTION 403(b) ANNUITY PLANS.—Section 404(a)(2) of such Code (relating to taxation of employees' annuities) is amended by inserting "and (29)" before "and, if applicable".

(3) PERMITTED ASSET WITHDRAWALS CONSTITUTING AN EXEMPTION FROM PROHIBITED TRANSACTIONS.—Subsection (d) of section 4975 of such Code (relating to exemptions from prohibited transactions) is amended—

(A) in paragraph (14), by striking "(F); or" and inserting "(F);";

(B) in paragraph (15), by striking "(F)." and inserting "(F); or"; and

(C) by inserting after paragraph (15) the following:

"(16) a withdrawal of assets of the plan in accordance with section 414 of the Employee Retirement Income Security Act of 1974.".

(4) ACTUARIAL STATEMENTS REQUIRED IN CASE OF ASSET WITHDRAWAL.—Subsection (b) of section 6058 of such Code (relating to actuarial statement in case of mergers, etc.) is amended—

(A) by striking "(b) ACTUARIAL" and all that follows through "the plan administrator" and inserting the following:

"(b) ACTUARIAL STATEMENT IN CASE OF MERGERS, ETC., OR ASSET WITHDRAWAL.—Not less than 30 days before—

"(1) a merger, consolidation, or transfer of assets or liabilities of a plan described in subsection (a) to another plan, or

"(2) a withdrawal of plan assets described in section 401(a)(29),

the plan administrator"; and

(B) by inserting "or section 401(a)(29) (as applicable)" after "section 401(a)(12)".

(5) EXCISE TAX ON CERTAIN WITHDRAWALS.—

(A) IN GENERAL.—Chapter 43 of such Code (relating to excise taxes relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

"SEC. 4980A. TAX ON CERTAIN WITHDRAWALS OF PLAN ASSETS.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on each withdrawal of plan assets from a qualified plan by the employer maintaining the plan if the amount of such withdrawal is in excess of the permissible amount.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be a percentage of the amount in excess of the permissible amount, determined as follows:

"(1) CORRECTION WITHIN 90 DAYS.—If a correction occurs with respect to the withdrawal before the end of the 90-day period following the date of the withdrawal, the amount of the tax shall be 5 percent of the amount in excess of the permissible amount.

"(2) CORRECTION WITHIN 365 DAYS.—If a correction does not occur with respect to the withdrawal before the end of the 90-day period described in paragraph (1) but does occur before the end of the 365-day period following the date of the withdrawal, the amount of the tax shall be 50 percent of the amount in excess of the permissible amount.

"(3) NO CORRECTION WITHIN 365 DAYS.—If a correction does not occur with respect to the withdrawal before the end of the 365-day period following the date of the withdrawal, the amount of the tax shall be 100 percent of the amount in excess of the permissible amount and an additional 100 percent of such excess for each subsequent 365-day period as of the end of which a correction has not occurred.

"(c) LIABILITY FOR TAX.—The tax imposed by subsection (a) shall be paid by the employer making the withdrawal.

"(d) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED PLAN.—The term 'qualified plan' means any defined benefit plan (other than a multiemployer plan) meeting the requirements of section 401(a) or 403(b). Such term shall include any defined benefit plan (other than a multiemployer plan) which at any time has been determined by the Secretary to be a qualified plan (within the meaning of the preceding sentence) or for which deductions have been taken by an employer under section 404.

"(2) PERMISSIBLE AMOUNT.—

"(A) IN GENERAL.—The term 'permissible amount' means the amount (as of immediately before the withdrawal) of the excess of the market value of plan assets over the minimum benefit security level of the plan.

"(B) EXCLUSION.—Such term does not include the market value of plan assets with respect to which a withdrawal may not occur by reason of a failure to meet any requirement of subsection (b) or (c) of section 414 of the Employee Retirement Income Security Act of 1974.

"(C) RECOMPUTATION TO ACCOUNT FOR NEW QUALIFIED EVENT-CONTINGENT BENEFITS.—Pursuant to such regulations as may be prescribed by the Secretary, if within 365 days after the withdrawal, the plan is amended to include (or increase) qualified event-contingent benefits (within the meaning of section 414(u)(2)(B)), the permissible amount shall be recomputed as of the time of the withdrawal and the amount of tax imposed under this subsection shall be determined as though such benefits (or such increase in such benefits) were included in the plan as of the time of the withdrawal.

"(3) MINIMUM BENEFIT SECURITY LEVEL.—The term 'minimum benefit security level' has the meaning provided in section 414(u).

"(4) CORRECTION.—The term 'correction' means, with respect to a withdrawal of plan assets, placing the plan in a financial position not worse than that in which the plan would be if the amount of the withdrawal had not been in excess of the permissible amount as of immediately before the withdrawal.".

(B) CONFORMING AMENDMENT RELATING TO EXCISE TAX ON PROHIBITED TRANSACTIONS.—Section 4975(g) of such Code (relating to tax on prohibited transactions) is amended by adding at the end the following new sentence: "This section shall not apply with respect to a prohibited transaction to which section 4980A applies.".

(C) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by adding at the end the following new item:

"Sec. 4980A. Tax on certain withdrawals of plan assets.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to withdrawals occurring after the later of—

(A) December 31, 1987, or

(B) 90 days after the date of the enactment of this Act.

(2) TRANSITION RULE.—In the case of any plan which is amended to provide for the withdrawal of plan assets under section 414 of the Employee Retirement Income Security Act of 1974 (as added by this section) during the first plan year beginning after December 31, 1988, subsection (b)(1) of such section shall be applied by substituting "fourth plan year" for "fifth plan year".

SEC. 6004. LIMITATIONS ON EMPLOYER REVERSIONS UPON PLAN TERMINATION.

(a) IN GENERAL.—Section 4044(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1344(d)) is amended to read as follows:

"(d) DISTRIBUTION OF PLAN ASSETS.—

"(1) IN GENERAL.—In any case in which there are plan assets remaining after satisfaction of all liabilities described in subsection (a), such assets shall be distributed in accordance with this subsection.

"(2) DISTRIBUTION OF ASSETS ATTRIBUTABLE TO EMPLOYEE CONTRIBUTIONS.—

"(A) IN GENERAL.—The remaining assets of the plan which are attributable to employee contributions shall be equitably distributed to the participants who made such contributions or their beneficiaries (including alternate payees, within the meaning of section 206(d)(3)(K)).

"(B) PORTION OF ASSETS ATTRIBUTABLE TO EMPLOYEE CONTRIBUTIONS.—For purposes of subparagraph (A), the portion of the remaining assets which are attributable to employee contributions shall be an amount equal to the product derived by multiplying—

"(i) the market value of total remaining assets, by

"(ii) a fraction—

"(I) the numerator of which is the present value of all portions of the accrued benefits with respect to participants which are derived from participants' mandatory contributions (referred to in subsection (a)(2)), and

"(II) the denominator of which is the present value of all benefits (or portions thereof) with respect to which assets are allocated under paragraphs (2) through (6) of subsection (a).

"(C) PARTICIPANTS AND BENEFICIARIES.—For purposes of this paragraph and paragraph (3), each person who is, as of the termination date—

"(i) a participant under the plan,

"(ii) an individual who has received, during the 3-year period ending with the termination date—

"(I) a distribution from the plan of such individual's entire nonforfeitable benefit in the form of a single sum distribution in accordance with section 203(e), or

"(II) a distribution from the plan in the form of irrevocable commitments purchased by the plan from an insurer to provide such nonforfeitable benefit,

shall be treated as a participant with respect to the termination, if all or part of the nonforfeitable benefit with respect to such person is or was attributable to employee contributions.

"(3) DISTRIBUTION OF ASSETS TO PARTICIPANTS AND BENEFICIARIES.—

"(A) IN GENERAL.—The remaining assets of the plan which are not required to be distributed under paragraph (2) shall be distributed among participants or beneficiaries (including alternate payees, within the meaning of section 206(d)(3)(K)) with respect to the termination to the extent provided in subparagraph (B) and in the manner provided in subparagraph (C).

"(B) AMOUNT AVAILABLE FOR DISTRIBUTION.—The amount of the remaining assets described in subparagraph (A) which are required to be distributed under this paragraph is an amount equal to the lesser of—

"(i) the amount of the remaining assets described in subparagraph (A), or

"(ii) the excess (not less than zero) of—

"(I) the minimum benefit security level (within the meaning of section 3(41)) of the plan as of the termination date, over

"(II) the sum of plan assets allocated under subsection (a) and plan assets distributed under paragraph (2).

"(C) MANNER OF DISTRIBUTION.—The amount distributed under this paragraph shall be distributed among the participants or beneficiaries (including alternate payees, within the meaning of section 206(d)(3)(K)) with respect to the termination so that each such participant and beneficiary receives an equal amount.

"(4) DISTRIBUTION TO EMPLOYER.—

"(A) IN GENERAL.—The remaining assets of the plan which are not required to be distributed under paragraphs (2) and (3) may be distributed to the employer if—

"(i) the distribution to the employer does not contravene any applicable provision of law,

"(ii) the plan provides for such distribution, subject to the requirements of subparagraph (B), and

"(iii) the employer, and each member of a controlled group including the employer, has not terminated a plan described in section 4021 with assets insufficient to satisfy all benefit liabilities, except that this clause shall not apply in any case in which the participants of such earlier terminated plan and the corporation have been placed in a financial position that is not worse than that in which the participants would have been placed had the earlier plan terminated with sufficient assets to meet benefit liabilities.

"(B) SPECIAL RULE FOR RECENTLY AMENDED PLANS.—

"(i) IN GENERAL.—In determining the extent to which a plan provides for the distribution of plan assets to the employer for purposes of this paragraph, any such provision, and any amendment increasing the amount which may be distributed to the employer, shall not be treated as effective before the end of the fifth calendar year following the date of the adoption of such provision or amendment.

"(ii) RECENTLY ESTABLISHED PLANS.—A distribution to the employer from a plan shall not be treated as failing to satisfy the requirements of this subparagraph if the plan has been in effect for fewer than 5 years and the plan has provided for such a distribution since the effective date of the plan.

"(iii) TREATMENT OF PLANS AFTER MERGERS, CONSOLIDATIONS, AND TRANSFERS.—Except as otherwise provided in regulations of the Secretary of the Treasury, in any case in which a transaction described in section 208 occurs, clause (i) shall continue to apply separately with respect to the amount of any assets transferred in such transaction.

"(C) EMPLOYER.—For purposes of this paragraph, the term 'employer' has the meaning provided in section 3(5).

"(5) DISTRIBUTION IN ABSENCE OF DISTRIBUTION TO EMPLOYER.—Except as otherwise provided in the terms of the plan or in any other document under which the plan is maintained or operated, assets of the plan which remain after distributions in accordance with paragraphs (2) and (3) and which are not distributed as provided in paragraph (4) shall be distributed to the participants and beneficiaries in the same proportions as assets of the plan are allocated under subsection (a).

"(6) GENERAL QUALIFICATION REQUIREMENTS.—If the Secretary of the Treasury determines that any distribution made pursuant to this subsection (without regard to this paragraph) results in discrimination prohibited by section 401(a)(4) of the Internal Revenue Code of 1986 or a violation of section 415 of such Code, then the distribution may be revised to prevent discrimination under section 401(a) or 403(b) of such Code or a violation of section 415 of such Code.

(b) TECHNICAL AMENDMENT.—Section 4044(b)(4) of such Act (29 U.S.C. 1344(b)(4)) is amended by striking "section 401(a), 403(a), or 405(a)" and inserting "section 401(a) or 403(a)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to terminations with respect to which the termination date occurs on or after October 9, 1987.

SEC. 6005. THREE-YEAR AMORTIZATION OF UNDERFUNDING OF PLANS OF CONTROLLED GROUP UPON DISTRIBUTION TO EMPLOYER FROM A TERMINATED PLAN OR UPON CERTAIN TRANSACTIONS INVOLVING PLAN ASSETS; TAX-FREE TRANSFERS BETWEEN CERTAIN SINGLE-EMPLOYER PLANS IN SAME CONTROLLED GROUP.

(a) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) ADDITIONAL CHARGES TO FUNDING STANDARD ACCOUNT.—Paragraph (2) of section 302(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(b)) is amended—

(i) in subparagraph (C), by striking "and" at the end;

(ii) in subparagraph (D), by striking "paragraph (3)(D)." and inserting "paragraph (3)(D),"; and

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

"(E) in the case of a single-employer plan, the amount necessary to amortize any allocated termination funding shortfall determined under section 302A(a) with respect to each prior plan year over a period of 3 plan years, and

"(F) in the case of a single-employer plan, the amount necessary to amortize any allocated transaction funding shortfall determined under section 302A(b) with respect to each prior plan year over a period of 3 plan years.".

(2) DETERMINATION OF ADDITIONAL CHARGES.—Part 3 of subtitle B of title I of such Act is amended by inserting after section 302 (29 U.S.C. 1082) the following new section:

"SEC. 302A. DETERMINATION OF CHARGES TO FUNDING STANDARD ACCOUNT ARISING FROM CERTAIN EMPLOYER DISTRIBUTIONS IN STANDARD TERMINATIONS OR CERTAIN TRANSACTIONS ADVERSELY AFFECTING PLAN ASSET SECURITY.

"(a) ADDITIONAL CHARGE TO FUNDING STANDARD ACCOUNT FOR ALLOCATED TERMINATION FUNDING SHORTFALL.—

"(1) APPLICABILITY OF ADDITIONAL CHARGE.—In the case of a standard termination of a single-employer plan under section 4041(b) in which occurs an employer distribution adversely affecting the plan asset security of a funded plan, if the amount of the assets of the funded plan is (as of immediately after the employer distribution) less than the lesser of—

"(A) the minimum benefit security level of the funded plan (determined as of immediately after the employer distribution), or

"(B) the amount of assets (determined as of immediately after the employer distribution) which the funded plan would need to hold so that the funded ratio with respect to such plan would equal the controlled group funded ratio with respect to such plan (determined as of immediately before the employer distribution),

an allocated termination funding shortfall for the funded plan shall be determined under this subsection with respect to the plan year in which the employer distribution occurs.

"(2) EMPLOYER DISTRIBUTION ADVERSELY AFFECTING PLAN ASSET SECURITY.—For purposes of this subsection, an employer distribution adversely affects plan asset security with respect to a funded plan if (at the time of the distribution) the employer receiving the distribution—

"(A) is the employer maintaining the funded plan, or

"(B) is included in the controlled group including the employer maintaining the funded plan.

"(3) ALLOCATED TERMINATION FUNDING SHORTFALL.—For purposes of this subsection—

"(A) IN GENERAL.—The allocated termination funding shortfall for a funded plan is the portion of the aggregate termination funding shortfall (determined under paragraph (4)) allocated to the funded plan under this paragraph.

"(B) PLANS AMONG WHICH ALLOCATION IS MADE.—The aggregate termination funding shortfall is allocated under this paragraph by apportioning such amount (in the manner and to the extent provided in subparagraph (C)) among all single-employer plans, each of which—

"(i) is maintained (at the time of the employer distribution) by the employer who maintains the funded plan (or by any other person in the controlled group including such employer), and

"(ii) holds (as of immediately after the transaction) a total amount of assets which is less than the lesser of—

"(I) the minimum benefit security level of the funded plan (determined as of immediately after the employer distribution), or

"(II) the amount of assets (determined as of immediately after the employer distribution) which the funded plan would need to hold so that the funded ratio with respect to such plan would equal the controlled group funded ratio with respect to such plan (determined as of immediately before the employer distribution).

"(C) MANNER OF ALLOCATION.—The aggregate termination funding shortfall shall be allocated in its entirety among all the plans described in subparagraph (B) in relation to the respective funded ratios with respect to such plans, in accordance with regulations of the Secretary of the Treasury, in such manner as to ensure that (as of immediately after the distribution)—

"(i) the funded ratios with respect to all such plans (taking into account amounts so allocated) are—

"(I) equivalent, and

"(II) not less than the highest of the funded ratios with respect to such plans, or

"(ii) if the total amount to be allocated is insufficient to satisfy the requirements of clause (i), the funded ratios with respect to those plans described in subparagraph (B) with the lowest funded ratios are, to the maximum extent practicable, increased to the same funded ratio (taking into account amounts so allocated)—

"(I) commencing the allocation with the plan with the lowest funded ratio (before taking into account amounts so allocated),

"(II) proceeding with allocations to such plans in ascending order of the funded ratios with respect to such plans, and

"(III) ensuring that no amount is so allocated to any such plan if the funded ratio with respect to another such plan is lower (taking into account amounts so allocated).

"(4) AGGREGATE TERMINATION FUNDING SHORTFALL.—For purposes of this subsection, the term 'aggregate termination funding shortfall' means an amount (determined as of immediately after the distribution) equal to the lesser of—

"(A) the sum of the termination funding shortfalls for all plans described in paragraph (3)(B), or

"(B) the amount of the employer distribution.

"(5) ADDITIONAL DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) FUNDED PLAN.—The term 'funded plan' means the plan maintaining the funding standard account under section 302 with respect to which the charge is determined under this subsection.

"(B) TERMINATION FUNDING SHORTFALL.—The term 'termination funding shortfall' means, with respect to any plan, an amount equal to the excess (not less than zero) of—

"(i) the lesser of—

"(I) the minimum benefit security level of such plan (determined as of immediately after the employer distribution), or

"(II) the amount of assets (determined as of immediately after the employer distribution) which the funded plan would need to hold so that the funded ratio with respect to such plan would equal the controlled group funded ratio with respect to such plan (determined as of immediately before the transaction), over

"(ii) the amount of the assets of such plan.

"(C) CONTROLLED GROUP FUNDED RATIO.—The term 'controlled group funded ratio' with respect to a plan means the ratio of—

"(i) the total amount of the assets held by the funded plan and the assets held by all of the other single-employer plans maintained by the employer who maintains the funded plan (or by any other person in the controlled group including the employer), to

"(ii) the total of the benefit liabilities of all plans referred to in clause (i).

"(D) FUNDED RATIO.—The term 'funded ratio' with respect to a plan means the ratio of—

"(i) the amount of the assets of such plan, to

"(ii) the benefit liabilities of such plan.

"(E) EMPLOYER DISTRIBUTION.—The term 'employer distribution' means a distribution of plan assets to the employer under section 4044(d)(4) in a standard termination of a single-employer plan under section 4041(b).

"(F) AMOUNT OF ASSETS.—Any reference to an amount of assets shall be deemed a reference to the current value of such assets.

"(G) TREATMENT OF MULTIPLE-EMPLOYER PLANS.—For purposes of subparagraph (C) and paragraph (3)(B), multiple-employer plans shall be disregarded except to such extent as may be prescribed in regulations of the Secretary of the Treasury referred to in section 302(c)(11).

"(H) ALTERNATIVE VALUATION DATES.—

"(i) IN GENERAL.—Except to the extent prescribed in such regulations as may be prescribed under clause (iii), at the election of the employer maintaining the funded plan—

"(I) amounts which are (but for this subparagraph) required to be determined as of immediately before an employer distribution shall be determined as of the beginning of the plan year preceding the plan year for which the charge under section 302(b)(2)(E) is made, except that, if the employer distribution occurs on the first day of such plan year, such amount shall, pursuant to any such election, be determined as of the beginning of the plan year for which the charge is made, and

"(II) in the case of an amount otherwise required to be determined as of immediately after the employer distribution, as of the beginning of the plan year for which the charge under section 302(b)(2)(E) is made.

"(ii) CERTIFICATION REQUIREMENTS.—This subparagraph shall permit a valuation with respect to any plan as of an alternative time only if the employer maintaining the funded plan certifies that—

"(I) in the case of an alternative time under clause (i)(I), as of immediately before the time of the employer distribution, there has been no material change in asset valuations (under the plan with respect to which the valuation is being made) or in the funded ratio (of such plan) since the alternative time for valuation, and

"(II) in the case of an alternative time under clause (i)(II), as of the alternative time for valuation, there has been no material change in asset valuations (under the plan with respect to which the valuation is being made) or in the funded ratio (of such plan) since immediately after the distribution.

"(iii) REGULATIONS.—The Secretary of the Treasury may by regulation provide for other times as alternative times for valuations to the extent consistent with the purposes of this subsection.

"(6) SECURITY FOR AMORTIZATION OF CHARGE.—

"(A) IN GENERAL.—Under regulations of the Secretary prescribed in consultation with the Secretary of the Treasury, the requirements of section 302 shall not be treated as satisfied with respect to the charge determined under this subsection unless, not later than the time of the employer distribution, the employer maintaining the funded plan, or any other person who is in the controlled group including the employer, provides to the plan security described in subparagraph (B) at the time of the employer distribution. Such security shall be payable on the 15th day of the third month following the third plan year to the extent of any outstanding balance of such charge as of such date. The security shall be released (and any amounts thereunder refunded with accrued interest) to the extent of any amount of such charge amortized as of the day specified in the preceding sentence.

"(B) NATURE OF SECURITY.—Security described in this subparagraph constitutes—

"(i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412, or

"(ii) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution,

in an amount sufficient to provide security to the funded plan for the charge determined under this subsection.

"(C) PAYMENT OF SECURITY UPON NONPAYMENT OF AMORTIZATION AMOUNT.—The security described in subparagraph (B) shall be paid to the funded plan if—

"(i) any payment required in the amortization, pursuant to section 302(b)(2)(E), of the charge determined under this subsection is not made when due, or

"(ii) the Secretary determines that the amortization, pursuant to section 302(b)(2)(E), of the charge determined under this subsection has not been, or cannot be, accomplished by reason of termination of the funded plan or a subsequent transaction adversely affecting plan asset security with respect to the funded plan (within the meaning of subsection (b)(2)).

"(D) PAYMENT OF SECURITY NECESSARY FOR MEETING MINIMUM FUNDING STANDARD.—In any case in which security is payable under the requirements of this paragraph, the requirements of section 302 shall not be treated as satisfied to the extent that such security is not paid or that payment of such security does not amortize in full the outstanding balance of the charge remaining under section 302(b)(2)(E).

"(b) ADDITIONAL CHARGE TO FUNDING STANDARD ACCOUNT FOR ALLOCATED TRANSACTION FUNDING SHORTFALL.—

"(1) APPLICABILITY OF ADDITIONAL CHARGE.—In the case of a transaction adversely affecting the plan asset security of a funded plan, if the amount of the assets of the funded plan (determined as of immediately after the transaction) is less than the lesser of—

"(A) the minimum benefit security level of the funded plan (determined as of immediately after the transaction), or

"(B) the amount of assets (determined as of immediately after the transaction) which the funded plan would need to hold so that the funded ratio with respect to such plan would equal the controlled group funded ratio with respect to such plan (determined as of immediately before the transaction),

an allocated transaction funding shortfall for such plan shall be determined under this subsection with respect to the plan year in which the transaction occurs.

"(2) TRANSACTION ADVERSELY AFFECTING PLAN ASSET SECURITY.—

"(A) IN GENERAL.—For purposes of this subsection, a transaction adversely affects plan asset security with respect to a funded plan if the requirements of subparagraphs (B) and (C) are met.

"(B) TRANSACTION AFFECTING RELATIONSHIP TO PLAN OF EMPLOYER OR CONTROLLED GROUP.—The requirements of this subparagraph are met with respect to a transaction if—

"(i) such transaction constitutes a merger, consolidation, or transfer of plan assets or liabilities referred to in section 208, and, in such transaction, assets or liabilities attributable to the funded plan, or to any other single-employer plan maintained by such employer (or by any other person who, as of immediately before the transaction, is in the controlled group including such employer), are transferred to, or consolidated or merged with, another plan, or

"(ii) in such transaction, responsibility for funding the funded plan, or any other single-employer plan for which such employer (or any other person who, as of immediately before the transaction, is in the controlled group including such employer) has responsibility for funding, is assumed (in whole or in part) from such employer (or other person) by another person.

"(C) ADVERSE EFFECT ON CONTROLLED GROUP FUNDED RATIO.—

"(i) IN GENERAL.—The requirements of this subparagraph are met with respect to a transaction if the amount allocated to the funded plan in an allocation described in clause (ii) is greater than the amount allo-

cated to the funded plan in an allocation described in clause (iii).

"(ii) ALLOCATION BEFORE TRANSACTION.—The allocation described in this subparagraph is an allocation (under paragraph (3)(C)) of the controlled group assets available for allocation (determined under paragraph (4)(B)) immediately before the transaction among all single-employer plans (including the funded plan described in paragraph (3)(B)).

"(iii) ALLOCATION AFTER TRANSACTION.—The allocation described in this subparagraph is an allocation (under paragraph (3)(C)) of the controlled group assets available for allocation (determined under paragraph (4)(B)) immediately after the transaction, except that such allocation shall be among all single-employer plans (including the funded plan) which are maintained (as of immediately after the transaction) by the employer then maintaining the funded plan (or by a person who is then in the controlled group including the employer).

"(3) ALLOCATED TRANSACTION FUNDING SHORTFALL.—For purposes of this subsection—

"(A) IN GENERAL.—The allocated transaction funding shortfall for a funded plan is the portion of the aggregate transaction funding shortfall (determined under paragraph (4)) allocated to the funded plan under this paragraph.

"(B) PLANS AMONG WHICH ALLOCATION IS MADE.—The aggregate transaction funding shortfall is allocated under this subparagraph by apportioning such amount (in the manner and to the extent provided in subparagraph (C)) among all plans, each of which—

"(i) is maintained (as of immediately before the transaction) by the employer who maintains the funded plan (or by any other person in the controlled group including such employer), and

"(ii) holds (as of immediately after the transaction) a total amount of assets which is less than the lesser of—

"(I) the minimum benefit security level of the funded plan (determined as of immediately after the transaction), or

"(II) the amount of assets (determined as of immediately after the transaction) which the funded plan would need to hold so that the funded ratio with respect to such plan would equal the controlled group funded ratio with respect to such plan (determined as of immediately before the transaction).

"(C) MANNER OF ALLOCATION.—The aggregate transaction funding shortfall shall be allocated in its entirety among all the plans described in subparagraph (B) in relation to the respective funded ratios with respect to such plans, in accordance with regulations of the Secretary of the Treasury, in such manner as to ensure that (as of immediately after the transaction)—

"(i) the funded ratios with respect to all such plans (taking into account amounts so allocated) are—

"(I) equivalent, and

"(II) not less than the highest of the funded ratios with respect to such plans, or

"(ii) if the total amount to be allocated is insufficient to satisfy the requirements of clause (i), the funded ratios with respect to those plans described in subparagraph (B) with the lowest funded ratios are, to the maximum extent practicable, increased to the same funded ratio (taking into account amounts so allocated)—

"(I) commencing the allocation with the plan with the lowest funded ratio (before taking into account amounts so allocated),

"(II) proceeding with allocations to such plans in ascending order of the funded ratios with respect to such plans, and

"(III) ensuring that no amount is so allocated to any such plan if the funded ratio with respect to another such plan is lower (taking into account amounts so allocated).

"(4) AGGREGATE TRANSACTION FUNDING SHORTFALL.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'aggregate transaction funding shortfall' means an amount (determined as of immediately after the transaction) equal to the lesser of—

"(i) the sum of the transaction funding shortfalls for all plans described in paragraph (3)(B), or

"(ii) the controlled group assets available for allocation, as determined under subparagraph (B).

"(B) EXCESS CONTROLLED GROUP ASSETS AVAILABLE FOR ALLOCATION.—For purposes of subparagraph (A)(ii), the amount of controlled group assets available for allocation is an amount equal to the lesser of—

"(i) the sum of the amounts, determined with respect to the funded plan and each other single-employer plan maintained (as of immediately before the transaction) by the employer then maintaining the funded plan (or by any person who is then in the controlled group including the employer), equal to the excess (not less than zero) of—

"(I) the amount of the assets of such plan (as of immediately before the transaction), over

"(II) the amount of the benefit liabilities of such plan, or

"(ii) the sum of the amounts, determined with respect to each plan referred to in clause (i), equal to the excess (not less than zero) of—

"(I) the amount of the assets of such plan (as of immediately before the transaction), over

"(II) the amount of assets (determined as of immediately after the transaction) which such plan would need to hold so that the funded ratio with respect to such plan would equal the controlled group funded ratio with respect to such plan (determined as of immediately before the transaction).

"(5) REDUCTION IN ADDITIONAL CHARGE WHEN FUNDED PLAN IS TRANSFERRED TO A CONTROLLED GROUP WITH EXCESS ASSETS.—

"(A) IN GENERAL.—In any case in which, in an allocation described in subparagraph (B), an amount is allocated to the funded plan, the amount of the allocated transaction funding shortfall determined under this subsection is the excess of—

"(i) such allocated transaction funding shortfall (determined without regard to this paragraph), over

"(ii) such amount allocated to the funded plan in the allocation described in subparagraph (B).

"(B) ALLOCATION OF EXCESS CONTROLLED GROUP ASSETS.—The allocation described in this subparagraph is an allocation (under paragraph (3)(C)) of the controlled group assets available for allocation (determined under paragraph (4)(B)), except that such allocation shall be among all single-employer plans (including the funded plan) which are maintained (as of immediately after the transaction) by the employer then maintaining the funded plan (or by a person who is then in the controlled group including the employer).

"(6) ADDITIONAL DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) FUNDED PLAN.—The term 'funded plan' means the plan maintaining the funding standard account under section 302 with respect to which the charge is determined under this subsection.

"(B) TRANSACTION FUNDING SHORTFALL.—The term 'transaction funding shortfall' means, with respect to any plan, an amount equal to the excess (not less than zero) of—

"(i) the lesser of—

"(I) the minimum benefit security level of such plan (determined as of immediately after the transaction), or

"(II) the amount of assets (determined as of immediately after the transaction) which the funded plan would need to hold so that the funded ratio with respect to such plan would equal the controlled group funded ratio with respect to such plan (determined as of immediately before the transaction), over

"(ii) the amount of the assets of such plan.

"(C) CONTROLLED GROUP FUNDED RATIO.—The term 'controlled group funded ratio' with respect to a plan means the ratio of—

"(i) the total amount of the assets held by the funded plan and the assets held by all of the other single-employer plans maintained by the employer who maintains the funded plan (or by any other person in the controlled group including the employer), to

"(ii) the total of the benefit liabilities of all plans referred to in clause (i).

"(D) FUNDED RATIO.—The term 'funded ratio' with respect to a plan means the ratio of—

"(i) the amount of the assets of such plan, to

"(ii) the benefit liabilities of such plan.

"(E) AMOUNT OF ASSETS.—Any reference to an amount of assets shall be deemed a reference to the current value of such assets.

"(F) TREATMENT OF MULTIPLE-EMPLOYER PLANS.—For purposes of subparagraph (C) and paragraph (3)(B), multiple-employer plans shall be disregarded except to such extent as may be prescribed in regulations of the Secretary of the Treasury referred to in section 302(c)(11).

"(G) ALTERNATIVE VALUATION DATES.—

"(i) IN GENERAL.—Except to the extent prescribed in such regulations as may be prescribed under clause (iii), at the election of the employer maintaining the funded plan—

"(I) amounts which are (but for this subparagraph) required to be determined as of immediately before a transaction shall be determined as of the beginning of the plan year preceding the plan year for which the charge under section 302(b)(2)(F) is made, except that, if the transaction occurs on the first day of such plan year, such amount shall, pursuant to any such election, be determined as of the beginning of the plan year for which the charge is made, and

"(II) in the case of an amount otherwise required to be determined as of immediately after the transaction, as of the beginning of the plan year for which the charge under section 302(b)(2)(F) is made.

"(ii) CERTIFICATION REQUIREMENTS.—This subparagraph shall permit a valuation with respect to any plan as of an alternative time only if the employer maintaining the funded plan certifies that—

"(I) in the case of an alternative time under clause (i)(I), as of immediately before the time of the transaction, there has been no material change in asset valuations (under the plan with respect to which the valuation is being made) or in the funded ratio (of such plan) since the alternative time for valuation, and

"(II) in the case of an alternative time under clause (i)(II), as of the alternative

time for valuation, there has been no material change in asset valuations (under the plan with respect to which the valuation is being made) or in the funded ratio (of such plan) since immediately after the transaction.

"(iii) REGULATIONS.—The Secretary of the Treasury may by regulation provide for other times as alternative times for valuations to the extent consistent with the purposes of this subsection.

"(7) SECURITY FOR AMORTIZATION OF CHARGE.—

"(A) IN GENERAL.—Under regulations of the Secretary prescribed in consultation with the Secretary of the Treasury, the requirements of section 302 shall not be treated as satisfied with respect to the charge determined under this subsection unless, not later than the time of the transaction, the employer maintaining the funded plan, or any other person who is in the controlled group including the employer, provides to the plan security described in subparagraph (B) at the time of the transaction. Such security shall be payable on the 15th day of the third month following the third plan year to the extent of any outstanding balance of such charge as of such day. The security shall be released (and any amounts thereunder with accrued interest) to the extent of any amount of such charge amortized as of the day specified in the preceding sentence.

"(B) NATURE OF SECURITY.—Security described in this subparagraph constitutes—

"(i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412, or

"(ii) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution,

in an amount sufficient to provide security to the funded plan for the charge determined under this subsection.

"(C) PAYMENT OF SECURITY UPON NONPAYMENT OF AMORTIZATION AMOUNT.—The security described in subparagraph (B) shall be paid to the funded plan if—

"(i) any payment required in the amortization, pursuant to section 302(b)(2)(F), of the charge determined under this subsection is not made when due, or

"(ii) the Secretary determines that the amortization, pursuant to section 302(b)(2)(F), of the charge determined under this subsection has not been, or cannot be, accomplished by reason of termination of the funded plan or a subsequent transaction adversely affecting plan asset security with respect to the funded plan.

"(D) PAYMENT OF SECURITY NECESSARY FOR MEETING MINIMUM FUNDING STANDARD.—In any case in which a security is payable under the requirements of this paragraph, the requirements of section 302 shall not be treated as satisfied to the extent that such security is not paid or that payment of such security does not amortize in full the outstanding balance of the charge remaining under section 302(b)(2)(F).

"(c) REGULATIONS.—The Secretary of the Treasury may prescribe such regulations as such Secretary may consider necessary to carry out the provisions of this section (including such regulations as such Secretary may consider necessary to preclude avoidance of the requirements of this section).".

(3) ADDITIONAL CHARGES NOT SUBJECT TO WAIVER.—Subsection (a) of section 303 of such Act (29 U.S.C. 1083(a)) is amended by striking "section 302(b)(2)(C)" and inserting "subparagraphs "(C), (E), and (F) of section 302(b)(2)".

(4) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act (29 U.S.C. 1001 note) is amended by inserting after the item relating to section 302 the following new item:

"Sec. 302A. Determination of charges to funding standard account arising from employer distributions in standard terminations or transactions adversely affecting plan asset security.".

(b) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(1) ADDITIONAL CHARGES TO FUNDING STANDARD ACCOUNT.—

(A) IN GENERAL.—Paragraph (2) of section 412(b) of the Internal Revenue Code of 1986 (relating to charges to funding standard account) is amended—

(i) in subparagraph (C), by striking "and" at the end;

(ii) in subparagraph (D), by striking "paragraph (3)(D)." and inserting "paragraph (3)(D),"; and

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

"(E) in the case of a defined benefit plan (other than a multiemployer plan), the amount necessary to amortize any allocated termination funding shortfall determined under section 412A(a) with respect to each prior plan year over a period of 3 plan years, and

"(F) in the case of a defined benefit plan (other than a multiemployer plan), the amount necessary to amortize any allocated transaction funding shortfall determined under section 412A(b) with respect to each prior plan year over a period of 3 plan years.".

(B) TREATMENT OF MULTIPLE-EMPLOYER PLANS.—Subsection (c) of section 412 of such Code (relating to special rules) is amended by adding at the end the following new paragraph:

"(11) TREATMENT OF MULTIPLE-EMPLOYER PLANS.—Subparagraphs (E) and (F) of subsection (b)(2) shall not apply with respect to multiple-employer plans, except to such extent as may be prescibed in regulations of the Secretary.".

(2) DETERMINATION OF ADDITIONAL CHARGES.—Chapter 1 of such Code is amended by inserting after section 412 the following new section:

"SEC. 412A. DETERMINATION OF CHARGES TO FUNDING STANDARD ACCOUNT ARISING FROM CERTAIN EMPLOYER DISTRIBUTIONS IN STANDARD TERMINATIONS OR CERTAIN TRANSACTIONS ADVERSELY AFFECTING PLAN ASSET SECURITY.

"(a) ADDITIONAL CHARGE TO FUNDING STANDARD ACCOUNT FOR ALLOCATED TERMINATION FUNDING SHORTFALL.—

"(1) APPLICABILITY OF ADDITIONAL CHARGE.—In the case of a standard termination of a plan under section 4041(b) of the Employee Retirement Income Security Act of 1974 in which occurs an employer distribution adversely affecting the plan asset security of a funded plan, if the amount of the assets of the funded plan is (as of immediately after the employer distribution) less than the lesser of—

"(A) the minimum benefit security level of the funded plan (determined as of immediately after the employer distribution), or

"(B) the amount of assets (determined as of immediately after the employer distribution) which the funded plan would need to hold so that the funded ratio with respect to such plan would equal the controlled group funded ratio with respect to such plan (determined as of immediately before the employer distribution),

an allocated termination funding shortfall for the funded plan shall be determined under this subsection with respect to the plan year in which the employer distribution occurs.

"(2) EMPLOYER DISTRIBUTION ADVERSELY AFFECTING PLAN ASSET SECURITY.—For purposes of this subsection, an employer distribution adversely affects plan asset security with respect to a funded plan if (at the time of the distribution) the employer receiving the distribution—

"(A) is the employer maintaining the funded plan, or

"(B) is included in the controlled group including the employer maintaining the funded plan.

"(3) ALLOCATED TERMINATION FUNDING SHORTFALL.—For purposes of this subsection—

"(A) IN GENERAL.—The allocated termination funding shortfall for a funded plan is the portion of the aggregate termination funding shortfall (determined under paragraph (4)) allocated to the funded plan under this paragraph.

"(B) PLANS AMONG WHICH ALLOCATION IS MADE.—The aggregate termination funding shortfall is allocated under this paragraph by apportioning such amount (in the manner and to the extent provided in subparagraph (C)) among all defined benefit plans (other than multiemployer plans), each of which—

"(i) is maintained (as of immediately before the employer distribution) by the employer who maintains the funded plan (or by any other person in the controlled group including such employer), and

"(ii) holds (as of immediately after the transaction) a total amount of assets which is less than the lesser of—

"(I) the minimum benefit security level of the funded plan (determined as of immediately after the employer distribution), or

"(II) the amount of assets (determined as of immediately after the employer distribution) which the funded plan would need to hold so that the funded ratio with respect to such plan would equal the controlled group funded ratio with respect to such plan (determined as of immediately before the employer distribution).

"(C) MANNER OF ALLOCATION.—The aggregate termination funding shortfall shall be allocated in its entirety among all the plans described in subparagraph (B) in relation to the respective funded ratios with respect to such plans, in accordance with regulations of the Secretary, in such manner as to ensure that (as of immediately after the distribution)—

"(i) the funded ratios with respect to all such plans (taking into account amounts so allocated) are—

"(I) equivalent, and

"(II) not less than the highest of the funded ratios with respect to such plans, or

"(ii) if the total amount to be allocated is insufficient to satisfy the requirements of clause (i), the funded ratios with respect to those plans described in subparagraph (B) with the lowest funded ratios are, to the maximum extent practicable, increased to the same funded ratio (taking into account amounts so allocated)—

"(I) commencing the allocation with the plan with the lowest funded ratio (before taking into account amounts so allocated),

"(II) proceeding with allocations to such plans in ascending order of the funded ratios with respect to such plans, and

"(III) ensuring that no amount is so allocated to any such plan if the funded ratio with respect to another such plan is lower (taking into account amounts so allocated).

"(4) AGGREGATE TERMINATION FUNDING SHORTFALL.—For purposes of this subsection, the term 'aggregate termination funding shortfall' means an amount (determined as of immediately after the employer distribution) equal to the lesser of—

"(A) the sum of the termination funding shortfalls for all plans described in paragraph (3)(B), or

"(B) the amount of the employer distribution.

"(5) ADDITIONAL DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) FUNDED PLAN.—The term 'funded plan' means the defined benefit plan maintaining the funding standard account under section 412 with respect to which the charge is determined under this subsection.

"(B) TERMINATION FUNDING SHORTFALL.—The term 'termination funding shortfall' means, with respect to any plan, an amount equal to the excess (not less than zero) of—

"(i) the lesser of—

"(I) the minimum benefit security level of such plan (determined as of immediately after the employer distribution), or

"(II) the amount of assets (determined as of immediately after the employer distribution) which the funded plan would need to hold so that the funded ratio with respect to such plan would equal the controlled group funded ratio with respect to such plan (determined as of immediately before the employer distribution),

over

"(ii) the amount of the assets of such plan.

"(C) CONTROLLED GROUP FUNDED RATIO.—The term 'controlled group funded ratio' with respect to a plan means the ratio of—

"(i) the total amount of the assets held by the funded plan and the assets held by all of the other defined benefit plans (other than multiemployer plans) maintained by the employer who maintains the funded plan (or by any other person in the controlled group including the employer), to

"(ii) the total of the benefit liabilities of all plans referred to in clause (i).

"(D) FUNDED RATIO.—The term 'funded ratio' with respect to a plan means the ratio of—

"(i) the amount of the assets of such plan, to

"(ii) the benefit liabilities of such plan.

"(E) EMPLOYER DISTRIBUTION.—The term 'employer distribution' means a distribution of plan assets to the employer as permitted under section 401(a)(2).

"(F) AMOUNT OF ASSETS.—Any reference to an amount of assets shall be deemed a reference to the market value of such assets.

"(G) TREATMENT OF MULTIPLE-EMPLOYER PLANS.—For purposes of subparagraph (C) and paragraph (3)(B), multiple-employer plans shall be disregarded except to such extent as may be prescribed in regulations of the Secretary referred to in section 412(c)(11).

"(H) ALTERNATIVE VALUATION DATES.—

"(i) IN GENERAL.—Except to the extent prescribed in such regulations as may be prescribed under clause (iii), at the election of the employer maintaining the funded plan—

"(I) amounts which are (but for this subparagraph) required to be determined as of immediately before an employer distribution shall be determined as of the beginning of the plan year preceding the plan year for which the charge under section 412(b)(2)(E) is made, except that, if the employer distribution occurs on the first day of such plan year, such amount shall, pursuant to any such election, be determined as of the beginning of the plan year for which the charge is made, and

"(II) in the case of an amount otherwise required to be determined as of immediately after the employer distribution, as of the beginning of the plan year for which the charge under section 412(b)(2)(E) is made.

"(ii) CERTIFICATION REQUIREMENTS.—This subparagraph shall permit a valuation with respect to any plan as of an alternative time only if the employer maintaining the funded plan certifies that—

"(I) in the case of an alternative time under clause (i)(I), as of immediately before the time of the employer distribution, there has been no material change in asset valuations (under the plan with respect to which the valuation is being made) or in the funded ratio (of such plan) since the alternative time for valuation, and

"(II) in the case of an alternative time under clause (i)(II), as of the alternative time for valuation, there has been no material change in asset valuations (under the plan with respect to which the valuation is being made) or in the funded ratio (of such plan) since immediately after the distribution.

"(iii) REGULATIONS.—The Secretary may by regulation provide for other times as alternative times for valuations to the extent consistent with the purposes of this subsection.

"(6) SECURITY FOR AMORTIZATION OF CHARGE.—

"(A) IN GENERAL.—Under regulations of the Secretary of Labor prescribed in consultation with the Secretary, the requirements of section 412 shall not be treated as satisfied with respect to the charge determined under this subsection unless, not later than the time of the employer distribution, the employer maintaining the funded plan, or any other person who is in the controlled group including the employer, provides to the plan security described in subparagraph (B) at the time of the employer distribution. Such security shall be payable on the 15th day of the third month following the third plan year to the extent of any outstanding balance of such charge as of such day. The security shall be released (and any amounts thereunder refunded with accrued interest) to the extent of any amount of such charge amortized as of the day specified in the preceding sentence.

"(B) NATURE OF SECURITY.—Security described in this subparagraph constitutes—

"(i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Employee Retirement Income Security Act of 1974 (relating to bonding), or

"(ii) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution,

in an amount sufficient to provide security to the funded plan for the charge determined under this subsection.

"(C) PAYMENT OF SECURITY UPON NONPAYMENT OF AMORTIZATION AMOUNT.—The security described in subparagraph (B) shall be paid to the funded plan if—

"(i) any payment required in the amortization, pursuant to section 412(b)(2)(E), of the charge determined under this subsection is not made when due, or

"(ii) the Secretary of Labor determines that the amortization, pursuant to section 412(b)(2)(E), of the charge determined under this subsection has not been, or cannot be, accomplished by reason of termination of the funded plan or a subsequent transaction adversely affecting plan asset security with respect to the funded plan (within the meaning of subsection (b)(2)).

"(D) PAYMENT OF SECURITY NECESSARY FOR MEETING MINIMUM FUNDING STANDARD.—In any case in which a security is payable under the requirements of this paragraph, the requirements of section 412 shall not be treated as satisfied to the extent that such security is not paid or that payment of such security does not amortize in full the outstanding balance of the charge remaining under section 412(b)(2)(E).".

"(b) ADDITIONAL CHARGE TO FUNDING STANDARD ACCOUNT FOR ALLOCATED TRANSACTION FUNDING SHORTFALL.—

"(1) APPLICABILITY OF ADDITIONAL CHARGE.—In the case of a transaction adversely affecting the plan asset security of a funded plan, if the amount of the assets of the funded plan (determined as of immediately after the transaction) is less than the lesser of—

"(A) the minimum benefit security level of the funded plan (determined as of immediately after the transaction), or

"(B) the amount of assets (determined as of immediately after the transaction) which the funded plan would need to hold so that the funded ratio with respect to such plan would equal the controlled group funded ratio with respect to such plan (determined as of immediately before the transaction),

an allocated transaction funding shortfall for such plan shall be determined under this subsection with respect to the plan year in which the transaction occurs.

"(2) TRANSACTION ADVERSELY AFFECTING PLAN ASSET SECURITY.—

"(A) IN GENERAL.—For purposes of this subsection, a transaction adversely affects plan asset security with respect to a funded plan if the requirements of subparagraphs (B) and (C) are met.

"(B) TRANSACTION AFFECTING RELATIONSHIP TO PLAN OF EMPLOYER OR CONTROLLED GROUP.—The requirements of this subparagraph are met with respect to a transaction if—

"(i) such transaction constitutes a merger, consolidation, or transfer of plan assets or liabilities referred to in section 414(l), and, in such transaction, assets or liabilities attributable to the funded plan, or to any other defined benefit plan (other than a multiemployer plan) maintained by such employer (or by any other person who, as of immediately before the transaction, is in the controlled group including such employer), are transferred to, or consolidated or merged with, another plan, or

"(ii) in such transaction, responsibility for funding the funded plan, or any other defined benefit plan (other than a multiemployer plan) for which such employer (or any other person who, as of immediately before the transaction, is in the controlled group including such employer) has responsibility for funding, is assumed (in whole or in part) from such employer (or other person) by another person.

"(C) ADVERSE EFFECT ON CONTROLLED GROUP FUNDED RATIO.—

"(i) IN GENERAL.—The requirements of this subparagraph are met with respect to a transaction if the amount allocated to the funded plan in an allocation described in clause (ii) is greater than the amount allo-

cated to the funded plan in an allocation described in clause (iii).

"(ii) ALLOCATION BEFORE TRANSACTION.—The allocation described in this subparagraph is an allocation (under paragraph (3)(C)) of the controlled group assets available for allocation (determined under paragraph (4)(B)) immediately before the transaction among all single-employer plans (including the funded plan described in paragraph (3)(B)).

"(iii) ALLOCATION AFTER TRANSACTION.—The allocation described in this subparagraph is an allocation (under paragraph (3)(C)) of the controlled group assets available for allocation (determined under paragraph (4)(B)) immediately after the transaction, except that such allocation shall be among all single-employer plans (including the funded plan) which are maintained (as of immediately after the transaction) by the employer then maintaining the funded plan (or by a person who is then in the controlled group including the employer).

"(3) ALLOCATED TRANSACTION FUNDING SHORTFALL.—For purposes of this subsection—

"(A) IN GENERAL.—The allocated transaction funding shortfall for a funded plan is the portion of the aggregate transaction funding shortfall (determined under paragraph (4)) allocated to the funded plan under this paragraph.

"(B) PLANS AMONG WHICH ALLOCATION IS MADE.—The aggregate transaction funding shortfall is allocated under this subparagraph by apportioning such amount (in the manner and to the extent provided in subparagraph (C)) among all plans, each of which—

"(i) is maintained (as of immediately before the transaction) by the employer who maintains the funded plan (or by any other person in the controlled group including such employer), and

"(ii) holds (as of immediately after the transaction) a total amount of assets which is less than the lesser of—

"(I) the minimum benefit security level of the funded plan (determined as of immediately after the transaction), or

"(II) the amount of assets (determined as of immediately after the transaction) which the funded plan would need to hold so that the funded ratio with respect to such plan would equal the controlled group funded ratio with respect to such plan (determined as of immediately before the transaction).

"(C) MANNER OF ALLOCATION.—The aggregate transaction funding shortfall shall be allocated in its entirety among all the plans described in subparagraph (B) in relation to the respective funded ratios with respect to such plans, in accordance with regulations of the Secretary, in such manner as to ensure that (as of immediately after the transaction)—

"(i) the funded ratios with respect to all such plans (taking into account amounts so allocated) are—

"(I) equivalent, and

"(II) not less than the highest of the funded ratios with respect to such plans, or

"(ii) if the total amount to be allocated is insufficient to satisfy the requirements of clause (i), the funded ratios with respect to those plans described in subparagraph (B) with the lowest funded ratios are, to the maximum extent practicable, increased to the same funded ratio (taking into account amounts so allocated)—

"(I) commencing the allocation with the plan with the lowest funded ratio (before taking into account amounts so allocated),

"(II) proceeding with allocations to such plans in ascending order of the funded ratios with respect to such plans, and

"(III) ensuring that no amount is so allocated to any such plan if the funded ratio with respect to another such plan is lower (taking into account amounts so allocated).

"(4) AGGREGATE TRANSACTION FUNDING SHORTFALL.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'aggregate transaction funding shortfall' means an amount (determined as of immediately after the transaction) equal to the lesser of—

"(i) the sum of the transaction funding shortfalls for all plans described in paragraph (3)(B), or

"(ii) the controlled group assets available for allocation, as determined under subparagraph (B).

"(B) EXCESS CONTROLLED GROUP ASSETS AVAILABLE FOR ALLOCATION.—For purposes of subparagraph (A)(ii), the amount of controlled group assets available for allocation is an amount equal to the lesser of—

"(i) the sum of the amounts, determined with respect to the funded plan and each other defined benefit plan (other than a multiemployer plan) maintained (as of immediately before the transaction) by the employer then maintaining the funded plan (or by any person who is then in the controlled group including the employer), equal to the excess (not less than zero) of—

"(I) the amount of the assets of such plan (as of immediately before the transaction), over

"(II) the amount of the benefit liabilities of such plan, or

"(ii) the sum of the amounts, determined with respect to each plan referred to in clause (i), equal to the excess (not less than zero) of—

"(I) the amount of the assets of such plan (as of immediately before the transaction), over

"(II) the amount of assets (determined as of immediately after the transaction) which such plan would need to hold so that the funded ratio with respect to such plan would equal the controlled group funded ratio with respect to such plan (determined as of immediately before the transaction).

"(5) REDUCTION IN ADDITIONAL CHARGE WHEN FUNDED PLAN IS TRANSFERRED TO A CONTROLLED GROUP WITH EXCESS ASSETS.—

"(A) IN GENERAL.—In any case in which, in an allocation described in subparagraph (B), an amount is allocated to the funded plan, the amount of the allocated transaction funding shortfall determined under this subsection is the excess of—

"(i) such allocated transaction funding shortfall (determined without regard to this paragraph), over

"(ii) such amount allocated to the funded plan in the allocation described in subparagraph (B).

"(B) ALLOCATION OF EXCESS CONTROLLED GROUP ASSETS.—The allocation described in this subparagraph is an allocation (under paragraph (3)(C)) of the controlled group assets available for allocation (determined under paragraph (4)(B)), except that such allocation shall be among all defined benefit plans (other than multiemployer plans), including the funded plan, which are maintained (as of immediately after the transaction) by the employer then maintaining the funded plan (or by a person who is then in the controlled group including the employer).

"(6) ADDITIONAL DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) FUNDED PLAN.—The term 'funded plan' means the defined benefit plan maintaining the funding standard account under section 412 with respect to which the charge is determined under this subsection.

"(B) TRANSACTION FUNDING SHORTFALL.—The term 'transaction funding shortfall' means, with respect to any plan, an amount equal to the excess (not less than zero) of—

"(i) the lesser of—

"(I) the minimum benefit security level of such plan (determined as of immediately after the transaction), or

"(II) the amount of assets (determined as of immediately after the transaction) which the funded plan would need to hold so that the funded ratio with respect to such plan would equal the controlled group funded ratio with respect to such plan (determined as of immediately before the transaction), over

"(ii) the amount of the assets of such plan.

"(C) CONTROLLED GROUP FUNDED RATIO.—The term 'controlled group funded ratio' with respect to a plan means the ratio of—

"(i) the total amount of the assets held by the funded plan and the assets held by all of the other defined benefit plans (other than multiemployer plans) maintained by the employer who maintains the funded plan (or by any other person in the controlled group including the employer), to

"(ii) the total of the benefit liabilities of all plans referred to in clause (i).

"(D) FUNDED RATIO.—The term 'funded ratio' with respect to a plan means the ratio of—

"(i) the amount of the assets of such plan, to

"(ii) the benefit liabilities of such plan.

"(E) AMOUNT OF ASSETS.—Any reference to an amount of assets shall be deemed a reference to the market value of such assets.

"(F) TREATMENT OF MULTIPLE-EMPLOYER PLANS.—For purposes of subparagraph (C) and paragraph (3)(B), multiple-employer plans shall be disregarded, except to such extent as may be prescribed in regulations of the Secretary referred to in section 412(c)(11).

"(G) ALTERNATIVE VALUATION DATES.—

"(i) IN GENERAL.—Except to the extent prescribed in such regulations as may be prescribed under clause (iii), at the election of the employer maintaining the funded plan—

"(I) amounts which are (but for this subparagraph) required to be determined as of immediately before a transaction shall be determined as of the beginning of the plan year preceding the plan year for which the charge under section 412(b)(2)(F) is made, except that, if the transaction occurs on the first day of such plan year, such amount shall, pursuant to any such election, be determined as of the beginning of the plan year for which the charge is made, and

"(II) in the case of an amount otherwise required to be determined as of immediately after the transaction, as of the beginning of the plan year for which the charge under section 412(b)(2)(F) is made.

"(ii) CERTIFICATION REQUIREMENTS.—This subparagraph shall permit a valuation with respect to any plan as of an alternative time only if the employer maintaining the funded plan certifies that—

"(I) in the case of an alternative time under clause (i)(I), as of immediately before the time of the transaction, there has been no material change in asset valuations (under the plan with respect to which the valuation is being made) or in the funded

ratio (of such plan) since the alternative time for valuation, and

"(II) in the case of an alternative time under clause (i)(II), as of the alternative time for valuation, there has been no material change in asset valuations (under the plan with respect to which the valuation is being made) or in the funded ratio (of such plan) since immediately after the transaction.

"(iii) REGULATIONS.—The Secretary may by regulation provide for other times as alternative times for valuations to the extent consistent with the purposes of this subsection.

"(6) SECURITY FOR AMORTIZATION OF CHARGE.—

"(A) IN GENERAL.—Under regulations of the Secretary of Labor prescribed in consultation with the Secretary, the requirements of section 412 shall not be treated as satisfied with respect to the charge determined under this subsection unless, not later than the time of the transaction, the employer maintaining the funded plan, or any other person who is in the controlled group including the employer, provides to the plan security described in subparagraph (B) at the time of the transaction. Such security shall be payable on the 15th day of the third month following the third plan year to the extent of any outstanding balance of such charge as of such day. The security shall be released (and any amounts thereunder with accrued interest) to the extent of any amount of such charge amortized as of the day specified in the preceding sentence.

"(B) NATURE OF SECURITY.—Security described in this subparagraph constitutes—

"(i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Employee Retirement Income Security Act of 1974 (relating to bonding), or

"(ii) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution,

in an amount sufficient to provide security to the funded plan for the charge determined under this subsection.

"(C) PAYMENT OF SECURITY UPON NONPAYMENT OF AMORTIZATION AMOUNT.—The security described in subparagraph (B) shall be paid to the funded plan if—

"(i) any payment required in the amortization, pursuant to section 412(b)(2)(F), of the charge determined under this subsection is not made when due, or

"(ii) the Secretary of Labor determines that the amortization, pursuant to section 412(b)(2)(F), of the charge determined under this subsection has not been, or cannot be, accomplished by reason of termination of the funded plan or a subsequent transaction adversely affecting plan asset security with respect to the funded plan.

"(D) PAYMENT OF SECURITY NECESSARY FOR MEETING MINIMUM FUNDING STANDARD.—In any case in which a security is payable under the requirements of this paragraph, the requirements of section 412 shall not be treated as satisfied to the extent that such security is not paid or that payment of such security does not amortize in full the outstanding balance of the charge remaining under section 412(b)(2)(F).

"(c) CONTROLLED GROUP.—

"(1) IN GENERAL.—For purposes of this section, the term 'controlled group' means, in connection with any person, a group consisting of such person and all other persons under common control with such person.

"(2) COMMON CONTROL.—For purposes of paragraph (1), the determination of whether 2 or more persons are under 'common control' shall be made under regulations prescribed by the Secretary of the Treasury under subsections (b), (c), (m), and (o) of section 414.

"(d) REGULATIONS.—The Secretary may prescribe such regulations as the Secretary may consider necessary to carry out the provisions of this section (including such regulations as the Secretary may consider necessary to preclude avoidance of the requirements of this section).".

(3) ADDITIONAL CHARGES NOT SUBJECT TO WAIVER.—Paragraph (1) of section 412 of such Code (relating to waiver in case of substantial business hardship) is amended by striking "subsection (b)(2)(C)" and inserting "subparagraphs (C), (E), and (F) of subsection (b)(2)".

(4) TAX-FREE TRANSFERS BETWEEN CERTAIN PLANS IN SAME CONTROLLED GROUP.—Subsection (c) of section 4980 of such Code (relating to definitions and special rules for tax on reversion of qualified plan assets to employer) is amended by adding at the end the following new paragraph:

"(4) EXCEPTION FOR TRANSFERS BETWEEN CERTAIN PLANS IN SAME CONTROLLED GROUP.—Any amount transferred through a trustee-to-trustee transfer between defined benefit plans (other than multiemployer plans) maintained by the same employer or by employers who at the time of the transfer are in the same controlled group (within the meaning of section 412A(c)) shall not be treated as an employer reversion for purposes of this section (or includible in the gross income of any such employer).".

(5) CLERICAL AMENDMENT.—The table of sections for subpart B of part 1 of subchapter D of chapter 1 of such Code is amended by inserting after the item relating to section 412 the following new item:

"Sec. 412A. Determination of charges to funding standard account arising from certain employer distributions in standard terminations or certain transactions adversely affecting plan asset security.".

(c) EFFECTIVE DATES.—The amendments made by this section (other than subsection (b)(4)) shall apply with respect to—

(1) employer distributions in plan terminations with respect to which the termination date occurs on or after the date of the enactment of this Act, and

(2) transactions occurring on or after the date of the enactment of this Act.

SEC. 6006. FUNDING WAIVERS.

(a) REQUIREMENTS FOR WAIVERS.—

(1) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—Section 303 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083) is amended by adding at the end thereof the following new subsection:

"(f) No waiver may be granted under this section with respect to any plan for any plan year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year."

(2) WAIVER ALLOWED ONLY FOR TEMPORARY HARDSHIP.—Section 303 of such Act (29 U.S.C. 1083) is amended by striking "substantial business hardship" in subsections (a) and (b) and inserting in lieu thereof "temporary substantial business hardship".

(3) HARDSHIP MUST ALSO EXIST AT CONTROLLED GROUP LEVEL.—Section 303 of such Act (29 U.S.C. 1083) (as amended by the preceding provisions of this subsection) is further amended by adding at the end thereof the following new subsection:

"(g)(1) If an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

"(A) with respect to such employer, and

"(B) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

"(2) For purposes of paragraph (1), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986."

(b) FREQUENCY OF WAIVERS.—The second sentence of section 303(a) of such Act (29 U.S.C. 1083(a)) is amended by striking "more than 5 of any 15" and inserting "more than 3 of any 15".

(c) REPAYMENT OF WAIVED CONTRIBUTIONS.—

(1) INTEREST.—

(A) VARIANCES FROM MINIMUM FUNDING STANDARD.—Subsection (a) of section 303 of such Act (29 U.S.C. 1083(a)) is amended by striking the last sentence and inserting the following new sentence: "The interest rate used for purposes of computing the amortization charge described in section 302(b)(2)(C) for any plan year shall be the greater of (1) 120 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or (2) the highest rate of interest used under the plan in determining charges to the funding standard account maintained by the plan."

(B) EXTENSIONS OF AMORTIZATION PERIODS.—Section 304(a) of such Act (29 U.S.C. 1084(a)) is amended by striking the last sentence and inserting in lieu thereof the following new sentence:

"The interest rate applicable for any plan year under any arrangement entered into by the Secretary of the Treasury in connection with an extension granted under this section shall be the greater of (1) 120 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or (2) the highest rate of interest used under the plan in determining charges to the funding standard account maintained by the plan."

(2) ADJUSTMENTS TO AMORTIZATION PERIOD FOR WAIVED FUNDING DEFICIENCIES.—Subparagraph (C) of section 302(b)(2) of such Act (29 U.S.C. 1082(b)(2)(C)) is amended to read as follows:

"(C) the amount necessary to amortize each waived funding deficiency for each prior plan year in equal annual installments (until fully amortized) over a period of 5 plan years, and".

(d) NOTICE TO PARTICIPANTS OF APPLICATION FOR FUNDING WAIVERS.—Section 303(e)(1) of such Act (29 U.S.C. 1083(e)(1)) is amended by striking "plan." and inserting "plan, and each affected party. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and the benefit liabilities (as defined in section 4001(a)(16)).".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply in the case of—

(A) any application submitted after the date of enactment of this Act, for a waiver

with respect to a plan year beginning after December 31, 1985, and

(B) any waiver granted pursuant to such an application.

(2) SPECIAL RULE FOR SUBSECTION (a)(1).—

(A) IN GENERAL.—The amendment made by subsection (a)(1) shall apply to plan years beginning after the date of enactment of this Act.

(B) TRANSITIONAL RULE FOR YEARS BEGINNING IN 1988.—In the case of any plan year beginning during calendar year 1988, section 412(d)(4) of the Internal Revenue Code of 1986 (as added by subsection (a)(1)) shall be applied by substituting "6th month" for "3rd month".

SEC. 6007. LIABILITY OF MEMBERS OF CONTROLLED GROUP FOR TAXES ON FAILURE TO MEET MINIMUM FUNDING STANDARDS.

(a) GENERAL RULE.—Section 4971 of the Internal Revenue Code of 1986 (relating to taxes on failure to meet minimum funding standards) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) LIABILITY FOR TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the tax imposed by subsection (a) or (b) shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).

"(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—If the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for the tax imposed by subsection (a) or (b).

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(b) TECHNICAL AMENDMENTS.—

(1) Subsection (a) of section 4971 of such Code is amended by striking the last sentence.

(2) Subsection (b) of section 4971 of such Code is amended by striking the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxes imposed for taxable years beginning after December 31, 1987.

SEC. 6008. INCREASE IN LIABILITIES ARISING UPON PLAN TERMINATION.

(a) BENEFIT LIABILITIES.—

(1) IN GENERAL.—Section 4001(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301(a)) is amended by striking paragraph (16) and inserting in lieu thereof the following:

"(16) 'benefit liabilities' to any person means, in connection with a plan terminated under this title, all benefits of such person under the plan as of the termination date (including benefits which are not protected under section 204(g));".

(2) CONFORMING AMENDMENTS.—Title IV of such Act is amended by striking "benefit commitments" each place it appears and inserting "benefit liabilities".

(b) LIABILITY TO CORPORATION FOR DISTRESS TERMINATION.—Section 4062(b)(1)(A)(ii)(I) of such Act (29 U.S.C. 1362(b)(1)(A)(ii)(I)) is amended by striking "75 percent" and inserting "100 percent".

(c) LIABILITY TO THE SECTION 4049 TRUST.—Section 4062(c)(1)(A) of such Act (29 U.S.C. 1362(c)(1)(A)) is amended by striking the last sentence and inserting the following: "The liability of such person under this subsection shall consist of the total outstanding amount of benefit liabilities under the plan.".

SEC. 6009. AMENDMENTS RELATING TO SECTION 4049 TRUST.

(a) ACCELERATION OF DISTRIBUTIONS FROM TRUST.—Section 4049(c)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1349(c)(1)) is amended by striking in the first sentence "Not later" and all that follows through "the corporation" and inserting the following: "Not later than 30 days after the receipt of each liability payment under section 4062(c) (but in no event more frequently than once per year), the corporation".

(b) CONFORMING AMENDMENTS.—Section 4049(c) of such Act (29 U.S.C. 1349(c)) is further amended—

(1) in paragraph (1)(B), by striking "such year" and inserting "a fiscal year of the trust"; and

(2) in paragraph (2), by striking all of the first sentence following "this subsection" and inserting "(other than the final payment owed under this subsection) if such payment does not exceed $100.", and by striking "following liability payment year" in the second sentence and inserting "payment due under this subsection".

SEC. 6010. SINGLE-EMPLOYER PLAN BENEFIT GUARANTY PREMIUMS.

(a) PREMIUM INCREASE.—

(1) IN GENERAL.—Section 4006(a)(3)(A)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)(i)) is amended by striking "for plan years beginning after December 31, 1985, an amount equal to $8.50" and inserting "for plan years beginning after December 31, 1987, an amount equal to $25.00".

(2) CONFORMING AMENDMENTS.—Section 4006(c)(1)(A) of such Act (29 U.S.C. 1306(c)(1)(A)) is amended—

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

(B) in clause (ii), by inserting "and before January 1, 1986," after "after December 31, 1977,"; and

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

"(iii) with respect to each plan year beginning after December 31, 1985, and before January 1, 1988, an amount equal to $8.50 for each individual who was a participant in such plan during the plan year, and".

(b) EMPLOYER LIABILITY FOR PREMIUMS.—

(1) IN GENERAL.—Section 4007(a) of such Act (29 U.S.C. 1307(a)) is amended—

(A) by striking "The plan administrator" and inserting "(1) Except as provided in paragraph (2), the plan administrator"; and

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

"(2) Each person who is a contributing sponsor of a single-employer plan or a member of the controlled group including such sponsor shall be jointly and severally liable to the corporation for payment of premiums for such plan. This paragraph shall not apply for plan years in which the assets of the plan exceed the sum of the minimum benefit security level (as defined in section 3(41)) and the premiums due under this section for such plan.".

(2) CONFORMING AMENDMENTS.—Subsections (b), (c), and (d) of section 4007 of such Act (29 U.S.C. 1307 (b), (c), and (d)) are each amended by inserting "(or, in the case of a single-employer plan, a contributing sponsor or member of the controlled group including such contributing sponsor)" after "plan administrator" each place it appears.

(c) DEPOSIT OF PREMIUMS INTO SEPARATE REVOLVING FUND.—Section 4005 of such Act (29 U.S.C. 1305) is amended—

(1) by redesignating subsection (f) as subsection (g); and

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

"(f)(1) A seventh fund shall be established and credited with—

"(A) premiums, penalties, and interest charges collected under section 4006(a)(3)(A)(i) to the extent attributable to the amount of the premium in excess of $8.50, and

"(B) earnings on investments of the fund or on assets credited to the fund.

"(2) Amounts in the fund shall be available for transfer to other funds established under this section with respect to a single-employer plan but shall not be available to pay—

"(A) administrative costs of the corporation, or

"(B) benefits under any plan that was terminated before January 1, 1988,

unless no other amounts are available for such payment.

"(3) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate."

SEC. 6011. INTEREST RATE ON ACCUMULATED CONTRIBUTIONS.

Section 411(c)(2) of the Internal Revenue Code of 1986 (relating to accrued benefit derived from employee contributions) is amended—

(1) in subparagraph (C)(iii), by striking "5 percent per annum" and inserting "120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year)"; and

(2) in subparagraph (D)—

(A) in the first sentence, by striking ", the rate of interest described in clause (iii) of subparagraph (C), or both,"; and

(B) by striking the second sentence.

SEC. 6012. INCREASE IN MINIMUM FUNDING STANDARDS.

(a) GENERAL RULE.—Paragraph (2) of section 412(b) of the Internal Revenue Code of 1986 (relating to changes to funding standard account) is amended by adding at the end thereof the following new sentence: "In the case of a plan to which subsection (l) applies for any year, if the sum of the normal cost of the plan for the plan year plus the unfunded benefit liabilities contribution for such year determined under subsection (l) exceeds the charge determined under the preceding sentence (reduced by the credits under paragraph (3)(B)), the amount charged to the funding standard account for such year under this paragraph shall be equal to such sum."

(b) AMOUNT OF UNFUNDED BENEFIT LIABILITIES CONTRIBUTION.—Section 412 of such Code (relating to minimum funding standards) is amended by adding at the end thereof the following new subsection:

"(l) UNFUNDED BENEFIT LIABILITIES CONTRIBUTION.—

"(1) IN GENERAL.—In the case of a plan to which this section applies for a plan year, the unfunded benefit liabilities contribution for purposes of subsection (b)(2) shall be equal to the lesser of—

"(A) the sum of the amounts determined under paragraph (3), or

"(B) the excess of—

"(i) 100 percent of the plan's benefit liabilities for such year, over

"(ii) the normal cost of the plan for such year determined under subsection (b)(2)(A).

"(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection applies to a plan (other than a multiemployer plan) for any plan year if the actuarial value of the assets of the plan determined under subsection (c)(2) is less than 100 percent of the plan's benefit liabilities.

"(3) DETERMINATION OF AMOUNTS.—For purposes of paragraph (1)(A)—

"(A) IN GENERAL.—The amounts determined under this paragraph are the amounts necessary to amortize in equal annual installments (until fully amortized)—

"(1) the unfunded past service liability of individuals in pay status over a period of 10 years, and

"(ii) the unfunded past service liability of individuals not in pay status over a period equal to the greater of—

"(I) 15 years, or

"(II) the plan's average worklife.

"(B) INCREASE FOR LUMP SUM DISTRIBUTIONS.—The amount determined under subparagraph (A)(i) for any plan year shall be increased by the applicable percentage of the aggregate amount of distributions during the preceding plan year—

"(i) which are not part of a series of payments described in section 72(t)(2)(A)(iv), or

"(ii) as payments for the purchase of annuity contracts for employees which are not held by the trust.

For purposes of this subparagraph, the term 'applicable percentage' means 100 percent minus the percentage which the actuarial value of the assets of the plan under subsection (c)(2) bears to the plan's benefit liabilities.

"(C) PHASE-IN OF AMORTIZATION OF LIABILITIES OF INDIVIDUALS NOT IN PAY STATUS.—In the case of plan years beginning before January 1, 1993, of a plan in existence on the date of enactment of the Retirement Security Promotion Act of 1987, subparagraph (A)(ii)(I) shall be applied to unfunded past service liabilities which are not attributable to plan amendments adopted on or after such date, by substituting for 15 years the number of years determined under the following table:

"In the case of a plan year beginning in:	The number of years is:
1988	25
1989	23
1990	21
1991	19
1992	17.

"(D) SPECIAL RULE FOR PLANS IN COMPLETE PAY STATUS.—If the only unfunded past service liabilities of a plan are liabilities described in subparagraph (A), subparagraph (A) shall be applied by reducing (but not below 1) the 10-year period by 1 year for each year after the 1st year to which this subparagraph applies.

"(E) AVERAGE WORKLIFE.—For purposes of subparagraph (A), the average worklife is the amount (rounded to the nearest whole number) by which—

"(i) the average age at which such employees (and former employees) are reasonably expected to attain pay status, exceeds

"(ii) the average age of employees (and former employees) whose liabilities are taken into account under subparagraph (A)(ii).

"(F) UNFUNDED LIABILITIES.—In determining unfunded past service liabilities, the assets of the plan shall be treated as—

"(i) first funding liabilities described in subparagraph (A)(i),

"(ii) second funding liabilities described in subparagraph (C), and

"(iii) then funding all other liabilities.

"(4) TIME DETERMINATIONS MADE.—Any determination required to be made under the plan for any plan year shall be determined on the valuation date of the plan for such year for purposes of this section."

(c) PERIODS FOR AMORTIZING CERTAIN GAINS AND LOSSES.—

(1) EXPERIENCE GAINS AND LOSSES.—Paragraphs (2)(B)(iv) and (3)(B)(ii) of section 412(b) of the Internal Revenue Code of 1987 are each amended by striking out "15 plan years" and inserting in lieu thereof "7 plan years".

(2) ACTUARIAL ASSUMPTIONS.—Paragraphs (2)(B)(v) and (3)(B)(iii) of section 412(b) of such Code are each amended by striking out "30 plan years" and inserting in lieu thereof "7 plan years".

(d) Section 412(c) of the Internal Revenue Code of 1986 (relating to special rules) is amended by adding at the end thereof the following new paragraph:

"(11) EXPERIENCE GAIN AND LOSS OF CERTAIN PLANS REQUIRED TO BE COMPUTED SEPARATELY.—If the accrued liability under a plan cannot be directly calculated under the funding method used for the plan, then the net experience loss or gain of the plan—

"(A) shall be computed separately in such manner as the Secretary may prescribe, and

"(B) shall be amortized under subsection (b)(2)(B)(iv) or (b)(3)(B)(ii), respectively."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply for plan years beginning on or after January 1, 1988.

SEC. 6013. TIME FOR MAKING CONTRIBUTIONS.

(a) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) REDUCTION OF PERIOD DURING WHICH CONTRIBUTIONS MAY BE MADE AFTER CLOSE OF YEAR.—Section 302(c)(10) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(c)(10)) is amended—

(A) in the first sentence, by striking out "For" and inserting in lieu thereof "Subject to subsection (d), for"; and

(B) by striking out the second sentence.

(2) QUARTERLY ESTIMATED PAYMENTS REQUIRED.—Section 302 of such Act is amended

(A) by redesignating subsection (d) as subsection (e); and

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

"(d)(1) In any case in which an employer maintains a plan to which this section applies, there shall be 4 required installments for each plan year ending with or within such taxable year.

"(2) The required installments shall be due as follows:

"In the case of the following required installments:	The due date is:
1st	March 15
2nd	June 15
3rd	September 15
4th	December 15.

"(3)(A) For purposes of this subsection, the amount of any required installment shall be 25 percent of the required annual payment.

"(B) For purposes of subparagraph (A), the term 'required annual payment' means the lesser of—

"(i) the estimated amount required to be contributed to or under the plan by the employer for the plan year by reason of this section, or

"(ii) in any case in which the preceding plan year equals 12 months, the amount so required for the preceding plan year.

"(4)(A) In applying this subsection to a plan year beginning on any date other than January 1, there shall be substituted, for the months specified in this subsection, the months that correspond thereto.

"(B) This subsection shall be applied to plan years of less then 12 months in accordance with regulations prescribed by the Secretary of the Treasury.".

(b) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(1) REDUCTION OF PERIOD DURING WHICH CONTRIBUTIONS MAY BE MADE AFTER CLOSE OF YEAR.—Paragraph (10) of section 412(c) of the Internal Revenue Code of 1986 (relating to time when certain contributions deemed made) is amended by striking out the last sentence.

(2) QUARTERLY ESTIMATED PAYMENTS REQUIRED.—

(A) IN GENERAL.—Chapter 43 of such Code (relating to qualified payments, etc., plans) is amended by inserting after section 4971 the following new section:

"SEC. 4971A. FAILURE BY EMPLOYER TO MAKE QUARTERLY PAYMENTS OF ESTIMATED REQUIRED CONTRIBUTION.

"(a) GENERAL RULE.—

"(1) IN GENERAL.—For each taxable year of an employer who maintains a plan—

"(A) to which section 412 applies, and

"(B) which is not a multiemployer plan (as defined in section 414(f)),

there is hereby imposed a tax equal to the amount determined under paragraph (2) with respect to any underpayment of a required installment for a plan year ending with or within such taxable year.

"(2) DETERMINATION OF AMOUNT.—The amount determined under this paragraph with respect to any underpayment shall be determined by applying—

"(A) the underpayment rate established under section 6621,

"(B) to the amount of the underpayment,

"(C) for the period of the underpayment.

"(b) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of subsection (a)—

"(1) AMOUNT.—The amount of the underpayment shall be the excess of—

"(A) the required installment, over

"(B) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

"(2) PERIOD OF UNDERPAYMENT.—The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier—

"(A) the 15th day of the 3rd month following the close of the plan year, or

"(B) with respect to any portion of the underpayment, the date on which such portion is contributed to or under the plan.

"(3) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of paragraph (2)(B), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(c) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this section—

"(1) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

"(2) TIME FOR PAYMENT OF INSTALLMENTS.—

"In the case of the following required installments:	The due date is:
1st	March 15
2nd	June 15

"In the case of the following required installments:	The number of years is:
The due date is:	
3rd	September 15
4th	December 15.

"(d) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this section—

"(1) IN GENERAL.—The amount of any required installment shall be 25 percent of the required annual payment.

"(2) REQUIRED ANNUAL PAYMENT.—For purposes of paragraph (1), the term 'required annual payment' means the lesser of—

"(A) the estimated amount required to be contributed to or under the plan by the employer for the plan year by reason of section 412, or

"(B) in any case in which the preceding plan year equals 12 months, the amount so required for the preceding plan year.

Subparagraph (B) shall not apply if the preceding plan year was not a year of 12 months.

"(e) FISCAL YEARS AND SHORT YEARS.—

"(1) FISCAL YEARS.—In applying this section to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this section, the months which correspond thereto.

"(2) SHORT PLAN YEAR.—This section shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary."

(B) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by inserting after the item relating to section 4971 the following new item:

"Sec. 4971A. Failure by employer to make quarterly payments of estimated required contribution.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 1990.

SEC. 6014. STUDY OF EVENT-CONTINGENT BENEFITS.

(a) STUDY.—The Secretary of Labor shall conduct a study of the economic impact of event-contingent pension benefits on private pension plans.

(b) REPORT.—Not later than February 1, 1988, the Secretary shall submit a report describing the results of the study, together with specific legislative recommendations for protection of private pension plans providing event-contingent benefits, to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

SEC. 6015. EFFECTIVE DATE.

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

Subtitle B—Guaranteed Student Loan Program Savings

SEC. 6101. RECOVERY OF EXCESS CASH RESERVES ACCUMULATED UNDER THE GUARANTEED STUDENT LOAN PROGRAM.

(a) IN GENERAL.—Section 422 of the Higher Education Act of 1965 (20 U.S.C. 1071) is amended by adding at the end thereof the following new subsection:

"(e) REDUCTION OF EXCESS CASH RESERVES.—

"(1) LIMITATION ON MAXIMUM CASH RESERVES.—A guaranty agency shall not accumulate cash reserves in excess of the greater of—

"(A) 40 percent of the total amount paid by that agency on insurance claims during the preceding fiscal year;

"(B) 0.3 percent of original principal amount of loans that are insured by that agency and that are outstanding at the end of such preceding fiscal year;

"(C) an amount which, when combined with all other parts of total agency reserves, equals 0.4 percent of such original principal amount;

"(D) $500,000; or

"(E) the amount required to comply with the reserve requirements of a State law as in effect on October 17, 1986.

"(2) RECOVERY OF EXCESS CASH RESERVES.—The Secretary shall, not later than March 31, 1988, determine for each guaranty agency the maximum cash reserve permitted under paragraph (1) for fiscal year 1986. Subject to paragraphs (3) and (4), if the Secretary determines that any guaranty agency had, at the end of fiscal year 1986, a cash reserve that exceeded such maximum, the Secretary shall direct the agency to eliminate such excess by any one or more of the following methods, as selected by the guaranty agency:

"(A) by repaying any advances to such agency made by the Secretary under this section that are not required to be repaid under subsection (d);

"(B) by withholding and canceling claims for reimbursement otherwise payable under section 428(c)(1);

"(C) by reducing the amount of payments for which application will be made by such agency under section 428(f); or

"(D) by any other method of reducing payments from or increasing payments to the Federal Government, including payment of additional reinsurance fees in addition to the fees required by section 428(c)(9), as proposed by the agency and agreed to by the Secretary.

"(3) APPEALS BASED ON SPECIAL CIRCUMSTANCES.—If the Secretary determines, on the basis of an application from a guaranty agency, that—

"(A) the agency's financial position has deteriorated significantly since the end of the preceding fiscal year; or

"(B) significant changes in the economic circumstances (such as a change in agency current cash reserves) or the loan insurance program render the limitations of paragraph (1) inadequate for the continued functioning of the agency,

the Secretary may waive, in whole or in part, the imposition of the remedies required by paragraph (2) for such agency.

"(4) RECOVERY LIMITS.—The Secretary shall not require a total reduction of cash reserves for all guaranty agencies in excess of $250,000,000 during fiscal year 1988. If the total of cash reserves of all guaranty agencies exceeds the maximum amounts permitted under paragraph (1) by more than $250,000,000, the Secretary shall ratably reduce the amounts that guaranty agencies are directed to eliminate under paragraph (2), so that the total excess cash reserves to be eliminated equals $250,000,000.

"(5) DEFINITIONS.—As used in this subsection—

"(A) the 'cash reserves' for any guaranty agency for any fiscal year are equal to the agency's cumulative cash receipts less the agency's cumulative cash disbursements at the end of such fiscal year;

"(B) the 'total reserves' for any guaranty agency for any fiscal year are equal to the agency's cash reserves plus the agency's cumulative accounts receivable less the agency's accounts payable, as of the end of such fiscal year;

"(C) the term 'cumulative cash receipts' includes such receipts as insurance premiums, Federal reinsurance payments, and collections on defaulted loans;

"(D) the term 'cumulative cash disbursements' includes such disbursements as payments for default claims, repayment of Federal advances, transfers to other State activities, and payment of collection costs and other operating costs;

"(E) the term 'accounts receivable' includes Federal reinsurance payments and administrative cost allowances owed but not yet paid to the guaranty agency, as of the end of a fiscal year; and

"(F) the term 'accounts payable' includes collections and reinsurance fees due (but not paid) to the Department of Education, as of the end of a fiscal year.".

(b) CONFORMING AMENDMENTS.—

(1) The second sentence of section 428(c)(1)(A) of such Act is amended by striking out "shall be deemed" and inserting "shall, subject to section 422(e), be deemed".

(2) Section 428(c)(9)(A) of such Act is amended by striking out "an amount equal to" and inserting "an amount, subject to section 422(e), equal to".

(3) The second sentence of section 428(f)(1)(B) of such Act is amended by striking out "shall be deemed" and inserting "shall, subject to section 422(e), be deemed".

SEC. 6102. REPEAL.

(a) IN GENERAL.—Subsection (e) of section 422 of the Higher Education Act of 1965 is repealed on September 30, 1989.

(b) CONFORMING AMENDMENTS.—

(1) Effective September 30, 1989, the second sentence of section 428(c)(1)(A) of such Act is amended by striking out "shall, subject to section 422(e), be deemed" and inserting "shall be deemed".

(2) Effective September 30, 1989, section 428(c)(9)(A) of such Act is amended by striking out "an amount, subject to section 422(e), equal to" and inserting "an amount equal to".

(3) Effective September 30, 1989, the second sentence of section 428(f)(1)(B) of such Act is amended by striking out "shall, subject to section 422(e), be deemed" and inserting "shall be deemed".

SEC. 6102. INFORMATION ON DEFAULTS REQUIRED.

(a) GENERAL RULE.—The first sentence of section 428(k)(1) of the Higher Education Act of 1965 is amended—

(1) by striking out "In" and inserting in lieu thereof "Notwithstanding any other provision of law, in"; and

(2) by striking out "may" and inserting in lieu thereof "shall".

(b) CONFORMING AMENDMENT.—The second sentence of section 428(k)(1) of such Act is amended by striking out "may" and inserting in lieu thereof "shall".

TITLE VII—VETERANS' PROGRAMS

SEC. 7001. SALES OF LOANS MADE BY THE VETERANS' ADMINISTRATION TO FINANCE THE SALE OF FORECLOSED PROPERTIES.

Section 1816(d) of title 38, United States Code, is amended by striking out paragraph (3).

SEC. 7002. EXTENSION OF LOAN FEE.

Section 1829(c) of title 38, United States Code, is amended by striking out "1987" and inserting in lieu thereof "1989".

SEC. 7003. CASH SALES OF PROPERTIES ACQUIRED THROUGH FORECLOSURES.

(a) NUMBER OF VENDEE LOANS.—Section 1816(d)(1) of title 38, United States Code, is amended by striking out "not more than 75 percent, nor less than 60 percent" and inserting in lieu thereof "not more than 65 percent, nor less than 50 percent".

(b) TERMINATION OF AUTHORITY TO MAKE AND FINANCE VENDEE LOANS.—Section 1816(d) is amended by adding at the end the following new paragraph:

"(6) This subsection shall cease to have effect on October 1, 1990.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as of October 1, 1987.

SEC. 7004. CONSTRUCTION.

(a) CONSTRUCTION FOR PURPOSES OF THE BALANCED BUDGET AND EMERGENCY DEFICIT REAFFIRMATION CONTROL ACT OF 1987.—For the purposes of subsections (a) and (b) of section 202 of the Balanced Budget and Emergency Deficit Reaffirmation Control Act of 1987 (Public Law 100-119), the amendments made by this section achieve savings made possible by changes in program requirements.

(b) RULE FOR CONSTRUCTION OF DUPLICATE PROVISIONS.—In applying the provisions of this title and the provisions of the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987 which make the same amendments as the provisions of this title—

(1) the identical provisions of title 38, United States Code, enacted by the provisions of this title and the provisions of such Act shall be treated as having been enacted only once; and

(2) in executing to title 38, United States Code, the amendments made by the provisions of this title and the provisions of such Act, such amendments shall be executed so as to appear only once in the law as amended.

TITLE VIII—AGRICULTURE

SEC. 8001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Agricultural Reconciliation Act of 1987".

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

TABLE OF CONTENTS

Sec. 8001. Short title; table of contents.
SUBTITLE A—AGRICULTURAL PRICE SUPPORT PROGRAMS
Sec. 8101. Agricultural income support reductions.
Sec. 8102. Loan rates.
Sec. 8103. Storage expenditures.
Sec. 8104. Whole base bid program.
Sec. 8105. Acreage limitation program for feed grains.
Sec. 8106. Paid land diversion program for feed grains.
Sec. 8107. Loan programs for soybeans and other oilseeds.
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Sec. 8304. Plant variety protection fees.
Sec. 8305. Annual appropriations to reimburse the Commodity Credit Corporation for net realized losses.
Sec. 8306. Federal crop insurance.
Sec. 8307. Ethanol usage.

Subtitle A—Agricultural Price Support Programs

SEC. 8101. AGRICULTURAL INCOME SUPPORT REDUCTIONS.

(a) TARGET PRICE REDUCTIONS.

(1) WHEAT.—Effective only for the 1988 crop of wheat, section 107D(c)(1)(G) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(c)(1)(G)) is amended by striking out "$4.29" and inserting in lieu thereof "$4.25".

(2) FEED GRAINS.—Effective only for the 1988 crop of feed grains, section 105C(c)(1)(E) of such Act (7 U.S.C. 1444e(c)(1)(E)) is amended by striking out "$2.97" and inserting in lieu thereof "$2.94".

(3) COTTON.—Effective only for the 1988 crop of upland cotton, section 103A(c)(1)(D) of such Act (7 U.S.C. 1444-1(c)(1)(D)) is amended by striking out "$0.77" and inserting in lieu thereof "$0.762".

(4) RICE.—Effective only for the 1988 crop of rice, section 101A(c)(1)(D) of such Act (7 U.S.C. 1441-1(c)(1)(D)) is amended by striking out "$11.30" and inserting in lieu thereof "$11.19".

(b) DAIRY ASSESSMENT.—Section 201(d)(2) of such Act (7 U.S.C. 1446(d)) is amended—

(1) in subparagraph (C), by striking out "subparagraph (A)" and inserting in lieu thereof "this paragraph"; and

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

"(F) During calendar year 1988, the Secretary shall provide for a reduction of 2½ cents per hundredweight to be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use.".

(c) WOOL PRICE SUPPORT REDUCTIONS.—Section 703(b) of the National Wool Act of 1954 (7 U.S.C. 1782) is amended—

(1) by striking out "The" and inserting in lieu thereof "(1) Except as provided in paragraphs (2) and (3), the";

(2) by striking out ": *Provided,*" and all that follows through the period and inserting in lieu thereof a period; and

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

"(2) Except as provided in paragraph (3), for the marketing years beginning January 1, 1982, and ending December 31, 1990, the support price for shorn wool shall be 77.5 percent (rounded to the nearest full cent) of the amount calculated according to paragraph (1).

"(3) For the marketing year beginning January 1, 1988, and ending December 31, 1988, the support price for shorn wool shall be 76.7 percent (rounded to the nearest full cent) of the amount calculated according to paragraph (1).".

SEC. 8102. LOAN RATES.

(a) WHEAT.—Effective only for the 1988 crop of wheat, section 107D(a)(3)(B) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(a)(3)(B)) is amended by inserting "(except that, in the case of the 1988 crop of wheat, 1 percent)" after "5 percent".

(b) FEED GRAINS.—Effective only for the 1988 crop of feed grains, section 105C(a)(2)(B) of such Act (7 U.S.C. 1444e(a)(2)(B)) is amended by inserting "(except that, in the case of the 1988 crop of corn, 1 percent)" after "5 percent".

(c) COTTON.—Effective only for the 1988 crop of upland cotton, section 103A(a)(2)(A) of such Act (7 U.S.C. 1444-1(a)(2)(A)) is amended by inserting "(except that, in the case of the 1988 crop of upland cotton, 1 percent)" after "5 percent".

(d) RICE.—Effective only for the 1988 crop of rice, section 101A(a)(2) of such Act (7 U.S.C. 1441-1(a)(2)) is amended by inserting "(except that, in the case of the 1988 crop of rice, 1 percent)" after "5 percent".

SEC. 8103. STORAGE EXPENDITURES.

For the fiscal years 1988 and 1989, the Secretary of Agriculture shall ensure that expenditures of the Commodity Credit Corporation for commercial storage, transportation, and handling of commodities owned by the Corporation (excluding storage payments made in accordance with section 110 of the Agricultural Act of 1949 (7 U.S.C. 1445e)) are reduced by $230,000,000 in such fiscal years from the amount of funds expended in fiscal year 1987 for commercial storage, transportation, and handling of such commodities. In order to achieve the savings required by this section, the Secretary shall adjust storage, handling, or transportation rates paid by the Corporation and take other appropriate actions.

SEC. 8104. WHOLE BASE BID PROGRAM.

(a) WHEAT.—Effective only for the 1988 and 1989 crops of wheat, section 107D(f) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(f)) is amended—

(1) in paragraph (5)(A), by striking out clause (iii) and inserting in lieu thereof the following new clause:

"(iii) The Secretary shall limit the total percentage of the wheat acreage base in a county to be diverted under the acreage limitation program, land diversion program, and base diversion program established under this subsection for a crop of wheat to a percentage that is 2.5 percent above the percentage reduction established under the acreage limitation program and the land diversion program for the crop."; and

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

"(9)(A) In the case of the 1988 and 1989 crops of wheat, if the Secretary determines that supplies of wheat will be excessive, the Secretary shall make base diversion payments to producers of wheat who agree to devote to approved conservation uses a quantity of acreage equal to the farm program acreage base for wheat on the farm in accordance with base diversion contracts entered into by the Secretary with such producers.

"(B) The amount of such payments shall be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or such other means as the Secretary determines appropriate. The Secretary shall make payments available under this paragraph at the same time and in the same manner as payments are made under subsection (c).

"(C) The contracts shall provide for the preservation of the crop acreage base of the producer.

"(D) Haying and grazing of wheat shall be permitted on acreage devoted to conservation uses under this paragraph, except during any consecutive 5-month period that

is established by the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State. Such 5-month period shall be established during the period beginning April 1, and ending October 31, of a year. In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on such acreage.".

(b) FEED GRAINS.—Effective only for the 1988 and 1989 crops of feed grains, section 105C(f) of such Act (7 U.S.C. 1444e(f)) is amended—

(1) in paragraph (5), by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraph:

"(C) The Secretary shall limit the total percentage of the feed grain acreage base in a county to be diverted under the acreage limitation program, land diversion program, and base diversion program established under this subsection for a crop of feed grains to a percentage that is 5 percent above the percentage reduction established under the acreage limitation program and the land diversion program for the crop."; and

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

"(9)(A) In the case of the 1988 and 1989 crops of feed grains, if the Secretary determines that supplies of feed grains will be excessive, the Secretary shall make base diversion payments to producers of feed grains who agree to devote to approved conservation uses a quantity of acreage equal to the farm program acreage base for feed grains on the farm in accordance with base diversion contracts entered into by the Secretary with such producers.

"(B) The amount of such payments shall be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or such other means as the Secretary determines appropriate. The Secretary shall make payments available under this paragraph at the same time and in the same manner as payments are made under subsection (c).

"(C) The contracts shall provide for the preservation of the crop acreage base of the producer.

"(D) Haying and grazing of feed grains shall be permitted on acreage devoted to conservation uses under this paragraph, except during any consecutive 5-month period that is established by the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State. Such 5-month period shall be established during the period beginning April 1, and ending October 31, of a year. In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on such acreage.

"(E) If the Secretary implements the program provided for by this paragraph, the Secretary shall implement a land diversion program as provided for in paragraph (5).".

(c) COTTON.—Effective only for the 1988 and 1989 crops of upland cotton, section 103A(f) of such Act (7 U.S.C. 1444-1(f)) is amended—

(1) in paragraph (4), by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraph:

"(C) The Secretary shall limit the total percentage of the upland cotton acreage base in a county to be diverted under the acreage limitation program, land diversion program, and base diversion program established under this subsection for a crop of upland cotton to a percentage that is 2.5 percent above the percentage reduction established under the acreage limitation program and the land diversion program for the crop."; and

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

"(8)(A) In the case of the 1988 and 1989 crops of upland cotton, if the Secretary determines that supplies of upland cotton will be excessive, the Secretary shall make base diversion payments to producers of upland cotton who agree to devote to approved conservation uses a quantity of acreage equal to the farm program acreage base for upland cotton on the farm in accordance with base diversion contracts entered into by the Secretary with such producers.

"(B) The amount of such payments shall be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or such other means as the Secretary determines appropriate. The Secretary shall make payments available under this paragraph at the same time and in the same manner as payments are made under subsection (c).

"(C) The contracts shall provide for the preservation of the crop acreage base of the producer.

"(D) In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on acreage devoted to conservation uses under this paragraph.".

(d) RICE.—Effective only for the 1988 and 1989 crops of rice, section 101A(f) of such Act (7 U.S.C. 1441-1(f)) is amended—

(1) in paragraph (4), by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraph:

"(C) The Secretary shall limit the total percentage of the rice acreage base in a county to be diverted under the acreage limitation program, land diversion program, and base diversion program established under this subsection for a crop of rice to a percentage that is 2.5 percent above the percentage reduction established under the acreage limitation program and the land diversion program for the crop."; and

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

"(8)(A) In the case of the 1988 and 1989 crops of rice, if the Secretary determines that supplies of rice will be excessive, the Secretary shall make base diversion payments to producers of rice who agree to devote to approved conservation uses a quantity of acreage equal to the farm program acreage base for rice on the farm in accordance with base diversion contracts entered into by the Secretary with such producers.

"(B) The amount of such payments shall be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or such other means as the Secretary determines appropriate. The Secretary shall make payments available under this paragraph at the same time and in the same manner as payments are made under subsection (c).

"(C) The contracts shall provide for the preservation of the crop acreage base of the producer.

"(D) In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on acreage devoted to conservation uses under this paragraph.".

(e) PAYMENT LIMITATION.—Section 1001(2)(B) of the Food Security Act of 1985 (7 U.S.C. 1308(2)(B)) is amended—

(1) by striking out "and" at the end of clause (v);

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

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

"(vii) any base diversion payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(f)(9), 105C(f)(9), 103A(f)(8), or 101A(f)(8), respectively, of the Agricultural Act of 1949.".

SEC. 8105. ACREAGE LIMITATION PROGRAM FOR FEED GRAINS.

(a) IN GENERAL.—Effective only for the 1988 and 1989 crops of feed grains, section 105C(f)(1) of the Agricultural Act of 1949 (7 U.S.C. 1444e(f)(1)) is amended—

(1) in subparagraph (A)(i), by striking out "subparagraphs (B) through (D)" and inserting in lieu thereof "this paragraph";

(2) by redesignating subparagraph (D) as subparagraph (F); and

(3) by inserting after subparagraph (C) the following new subparagraphs:

"(D) In the case of each of the 1988 and 1989 crops of feed grains, if the Secretary provides for an acreage limitation program (as described in paragraph (2)), the Secretary shall provide for a reduction of not more than 5 percent, in addition to the reduction permitted under subparagraph (C), in the quantity of acreage that may be planted to feed grains for harvest on a farm. The Secretary shall permit all or any part of such additional reduced acreage to be devoted to soybeans, sunflowers, or other oilseeds specified by the Secretary. The Secretary shall provide for the protection of the feed grain crop acreage base of a farm for any such acreage devoted to soybeans, sunflowers, or other oilseeds specified by the Secretary. In the case of the 1989 crop of feed grains, the Secretary may waive the application of this subparagraph if the Secretary estimates that (i) such waiver is necessary in order to maintain adequate supplies of feed grains, or (ii) the quantity of soybeans on hand in the United States on the first day of the 1989 marketing year for that crop (not including any quantity of soybeans of that crop) will be 425 million bushels.".

"(E) If the Secretary waives the provision of subparagraph (D) in accordance with clause (D)(ii), the Secretary shall provide for a reduction of not more than 2.5 percent in addition to the reduction permitted under subparagraph (C) in the quantity of acreage that may be planted to feed grains for harvest on a farm.".

(b) OATS.—Effective only for the 1988 through 1990 crops of feed grains, section 105C(f)(2) of such Act is amended by adding at the end thereof the following new subparagraph:

"(G) In the case of the 1988 through 1990 crops of oats, the Secretary shall not establish a percentage reduction in accordance with paragraph (1) in excess of 5 percent. In implementing this subparagraph, the Secretary shall issue regulations that provide for the fair and equitable treatment of producers on a farm for which an oat and barley crop acreage base has been established. To ensure the efficient and fair implementation of this subparagraph, the Secretary shall announce revisions of the acreage limitation program for the 1988 crop of feed grains that implement this subparagraph as soon as practicable after the date of enactment of the Agricultural Reconciliation Act of 1987. In the case of the 1990 crop of oats, the Secretary may waive the application of this subparagraph if the Secretary deter-

mines that the supply of oats will be excessive.".

(c) CONFORMING AMENDMENTS.—

(1) PLANTING SOYBEANS ON REDUCED ACREAGE.—Effective only for the 1988 and 1989 crops of soybeans, section 201(i)(6)(B) of such Act (7 U.S.C. 1446(i)(6)(B)) is amended by inserting ", except as provided in section 105C(f)(1)(D)" before the semicolon at the end thereof.

(2) CONSIDERED PLANTED ACREAGE.—Effective only for the 1988 and 1989 crops of wheat, feed grains, upland cotton, and rice, section 504(b)(2) of such Act (7 U.S.C. 1464(b)(2)) is amended—

(A) by striking out "and" at the end of subparagraph (D);

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

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

"(F) any acreage planted to soybeans, sunflowers, or other oilseeds specified by the Secretary in accordance with section 105C(f)(1)(D).".

SEC. 8106. PAID LAND DIVERSION PROGRAM FOR FEED GRAINS.

Effective only for the 1988 and 1989 crops of feed grains, section 105C(f)(5) of the Agricultural Act of 1949 (7 U.S.C. 1444e(f)(5)) is amended by adding at the end thereof the following new subparagraph:

"(D)(i) If land diversion payments are made in accordance with this paragraph with respect to the 1988 or 1989 crop of corn—

"(I) in the case of the 1988 crop, the required reduction in the crop acreage base shall be 5 percent and the diversion payment rate shall be $2.00 per bushel; and

"(II) in the case of the 1989 crop, (AA) except as provided in (BB), the required reduction in the crop acreage base shall be 5 percent and the diversion payment rate shall be $1.75 per bushel;

"(BB) If the Secretary waives the provisions of paragraph (1)(D) in accordance with paragraph (1)(E), the required reduction in the crop acreage base for feed grains shall be 7.5 percent and the diversion payment rate shall be $1.75 per bushel. Such land diversion payments shall be made available as follows: 20 percent at the time the producer enters into a contract to participate in the 1989 feed grain program and the remainder at the time payments are made in accordance with subsection (c)(1)(c)(i).

"(ii) In the case of any land diversion program established for the 1988 or 1989 crop of barley, grain sorghum, and oats, the Secretary shall, in determining the diversion payment rate, take into consideration the diversion payment established for the 1988 or 1989 crop of corn, respectively.".

SEC. 8107. LOAN PROGRAMS FOR SOYBEANS AND OTHER OILSEEDS.

(a) SOYBEANS.—Effective only for the 1988 through 1990 crops of soybeans, section 201(i)(3) of the Agricultural Act of 1949 (7 U.S.C. 1446(i)(3)) is amended—

(1) in subparagraph (A), by striking out "If" and all that follows through "may" and inserting in lieu thereof "The Secretary may, for each of the 1986, 1987, and 1990 crops of soybeans, and shall, for each of 1988 and 1989 crops of soybeans,"; and

(2) in subparagraph (B), by striking out "If" and all that follows through "shall" and inserting in lieu thereof "The Secretary shall".

(b) SUNFLOWERS.—Effective only for the 1988 through 1990 crops of sunflowers, section 201(l) of such Act is amended—

(1) in paragraph (1)—

(A) by striking out "may" and inserting in lieu thereof "may, for each of the 1987 and 1990 crops of sunflowers, and shall, for each of 1988 and 1989 crops of sunflowers,";

(B) by striking out "for each of the 1987 through 1990 crops of sunflowers"; and

(C) by striking out "8½ cents per pound of sunflower seeds" and inserting in lieu thereof "8½ cents per pound of sunflower seeds, for the 1987 crop, and 8 cents per pound of sunflower seeds, for each of the 1988 through 1990 crops"; and

(2) in paragraph (2)(A), by striking out "may" and inserting in lieu thereof "may, for each of the 1987 and 1990 crops, and shall, for each of the 1988 and 1989 crops,".

(c) COTTONSEEDS.—Effective only for the 1988 and 1989 crops of cottonseeds, section 201 of such Act is amended by adding at the end thereof the following new paragraph:

"(7) The Secretary shall support the price of each of the 1988 and 1989 crops of cottonseeds through loans at such level and in such manner as the Secretary determines is fair and reasonable in relation to the level and manner in which the price of soybeans is supported.".

SEC. 8108. ADVANCE PAYMENTS.

Effective only for the 1988 through 1990 crops of wheat, feed grains, upland cotton, and rice, section 107C(a) of the Agricultural Act of 1949 (7 U.S.C. 1445b-2(a)) is amended—

(1) by striking out paragraph (1) and inserting in lieu thereof the following new paragraph:

"(1) If the Secretary establishes an acreage limitation or set-aside program for any of the 1988 through 1990 crops of wheat, feed grains, upland cotton, or rice under this Act and determines that deficiency payments will likely be made for such commodity for such crop, the Secretary shall make advance deficiency payments available to producers for each of such crops."; and

(2) in paragraph (2)(F), by striking out clause (iii) and inserting in lieu thereof the following new clause:

"(iii)(I) in the case of wheat and feed grains, not less than 40 percent, nor more than 50 percent, of the projected payment rate; and

"(II) in the case of rice and upland cotton, not less than 30 percent, nor more than 50 percent, of the projected payment rate,".

SEC. 8109. ADVANCED EMERGENCY COMPENSATION PAYMENTS FOR WHEAT.

Effective only for the 1987 through 1990 crops of wheat, section 107D(c)(1)(E) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(c)(1)(E)) is amended by adding at the end thereof the following new clauses:

"(iii) Notwithstanding any other provision of this Act, in the case of each of the 1987 through 1990 crops of wheat, the Secretary shall—

"(I) by December 1 of each of the marketing years for such crops (or, in the case of the 1987 crop, as soon as practicable after the date of enactment of the Agricultural Reconciliation Act of 1987), estimate the national weighted average market price, per bushel of wheat, received by producers during such marketing year;

"(II) by December 15 of such marketing year (or, in the case of the 1987 crop, as soon as practicable, but not later than 60 days, after the date of enactment of such Act), use the estimate to make available to producers who have elected the payment option authorized by this clause not less than 90 percent of the increase in established price payments estimated to be payable with respect to such crop under this subparagraph; and

"(III) adjust the amount of each final established price payment for wheat to reflect any difference between the amount of any estimated payment made under this clause and the amount of actual payment due under this subparagraph.

"(iv) Producers shall elect the payment option authorized by clause (iii)—

"(I) in the case of each of the 1987 crop of wheat, not later than 30 days after the date of enactment of the Agricultural Reconciliation Act of 1987; and

"(II) in the case of each of the 1988 through 1990 crops of wheat, at the time of entering into a contract to participate in the program established by this section for the crop.".

SEC. 8110. PRODUCER RESERVE PROGRAM.

Subparagraph (A) of the fourth sentence of section 110(b) of the Agricultural Act of 1949 (7 U.S.C. 1445e(b)) is amended—

(1) in clause (i), by striking out "17 percent of the estimated total domestic and export usage of wheat during the then current marketing year for wheat, as determined by the Secretary" and inserting in lieu thereof "300 million bushels"; and

(2) in clause (ii), by striking out "7 percent of the estimated total domestic and export usage of feed grains during the then current marketing year for feed grains, as determined by the Secretary" and inserting in lieu thereof "450 million bushels".

SEC. 8111. HONEY LOANS AND PAYMENT LIMITATION.

(a) LOAN AND PURCHASE LEVELS.—Effective only for the 1987 through 1990 crops of honey, section 201(b)(1) of the Agricultural Act of 1949 (7 U.S.C. 1446(b)(1)) is amended by adding at the end thereof the following new subparagraph:

"(D) Notwithstanding the foregoing provisions of this paragraph, effective for each of the 1987 through 1990 crops, the loan and purchase level for honey that would otherwise apply under subparagraphs (B) and (C), without regard to this subparagraph, shall be reduced for loans and purchases made after the date of enactment of the Agricultural Reconciliation Act of 1987 by 2 cents per pound for the 1987 crop, 3/4 cents per pound for the 1988 crop, 1/2 cent per pound for the 1989 crop, and 1/4 cent per pound for the 1990 crop.".

(b) PAYMENT LIMITATION.—Section 1001(2) of the Food Security Act of 1985 (7 U.S.C. 1308(2)) (as amended by the matter under the heading "HONEY" of chapter X of title I of the Supplemental Appropriations Act, 1987 (Public Law 100-71; 101 Stat. 428)) is amended—

(1) in subparagraph (A), by striking out "honey,";

(2) in subparagraph (B)(iii)(I)—

(A) by striking out "cotton, rice, or honey" and inserting in lieu thereof "cotton, or rice"; and

(B) by striking out "103A(a)(5), 101A(a)(5), or 201(b)(2)" and inserting in lieu thereof "103A(a)(5), or 101A(a)(5)";

(3) in subparagraph (B)(iii)(II), by inserting ", except honey," after "any other commodity"; and

(4) in subparagraph (C), by striking out clause (i) and inserting in lieu thereof the following new clause:

"(i) The total dollar amount of loan forfeitures on a crop of honey that a person

may make under the annual nonrecourse loan program established for such crop under the Agricultural Act of 1949 may not exceed $250,000."

SEC. 8112. LOAN RATE DIFFERENTIALS.

Section 403 of the Agricultural Act of 1949 (7 U.S.C. 1423) is amended by adding at the end thereof the following new sentence: "Notwithstanding the previous provisions of this section, for each of the 1988 through 1990 crops, no adjustment in the loan rate applicable to a particular region, State, or county for the purpose of reflecting transportation differentials may increase or decrease such regional, State, or county loan rate from the level established for the previous year by more than the percentage change in the national average loan rate plus or minus 1 percent.".

SEC. 8113. YIELD ADJUSTMENTS.

Effective only for the 1988 through 1990 crops of wheat, feed grains, upland cotton, and rice, section 506(b)(2) of the Agricultural Act of 1949 (7 U.S.C. 1466(b)(2)) is amended by adding at the end thereof the following new subparagraph:

"(C) In the case of each of the 1988 through 1990 crop years for a commodity, if the farm program payment yield for a farm is reduced more than 10 percent below the farm program payment yield for the 1985 crop year, the Secretary shall make available to producers established price payments for the commodity in such amount as the Secretary determines is necessary to provide the same total return to producers as if the farm program payment yield had not been reduced more than 10 percent below the farm program payment yield for the 1985 crop year. Such payments shall be made available to producers at the time final deficiency payments are made available.".

Subtitle B—Prepayment of Rural Electrification Loans

SEC. 8201. PREPAYMENT OF LOANS.

(a) IN GENERAL.—Section 306A of the Rural Electrification Act of 1936 (7 U.S.C. 936a) is amended to read as follows:

"SEC. 306A. PREPAYMENT OF LOANS.

"(a) IN GENERAL.—If, on the effective date of this section, a borrower has an outstanding loan made by the Federal Financing Bank and guaranteed by the Administrator of the Rural Electrification Administration under section 306, the borrower may prepay such loan (or any loan advance made thereunder) by paying the outstanding principal balance due on such loan advance if—

"(1) private capital, with the existing loan guarantee (available at the option of the borrower), is used to replace the loan;

"(2) the borrower certifies that any savings from such prepayment will be—

"(A) passed on to its customers;

"(B) in a case of financial hardship, used to improve the financial strength of the borrower; or

"(C) used to avoid future rate increases; and

"(3) the borrower certifies that the borrower will not apply for a loan made by the Administrator of the Rural Electrification Administration or the Federal Financing Bank to refinance the private loan or replace private capital used to prepay a loan advance under this subsection, except as authorized by the Administrator or the Bank, respectively.

"(b) PROCESSING FEE FOR PREPAYMENT.—

"(1) IN GENERAL.—A processing fee shall be assessed against each Rural Electrification Administration borrower who has a request for prepayment of a loan advance from the Federal Financing Bank under this section approved after September 30, 1987.

"(2) ONE-TIME FEE.—The processing fee shall be assessed as a one-time fee due at the time of prepayment on each loan advance prepaid by charging, against the outstanding principal balance of the loan advance—

"(A) 50 basis points; plus

"(B) points equal to 50 percent of the difference between the interest rate on the Federal Financing Bank loan advance being prepaid and the cost of money to the Federal government at the time of prepayment for new Treasury borrowings of the same maturity as the Federal Financing Bank loan advance being prepaid.

"(c) NO ADDITIONAL CHARGES.—No sums in addition to the payment of the outstanding principal balance of the loan advance and a processing fee assessed thereon, as prescribed in subsection (b), may be charged as the result of such prepayment against—

"(1) the borrower;

"(2) the Rural Electrification and Telephone Revolving Fund; or

"(3) the Rural Electrification Administration.

"(d) AMENDMENT OF EXISTING GUARANTEE.—The existing guarantee shall, at the option of the borrower, be amended to include, for the duration of the term of the Rural Electrification Administration guarantee on the Federal Financing Bank loan advance prepaid, the amount of principal balance prepaid on the loan advance plus the amount of the processing fee paid by the borrower and the cost to the borrower of obtaining private capital. Private loans with the Rural Electrification Administration guarantee used to prepay a Federal financing bank loan advance shall not exceed this amount. Such loans shall be made on terms and conditions acceptable to the borrower and the lender.

"(e) ASSIGNABILITY.—A guarantee of a loan advance prepaid under this section with private capital shall be fully assignable and transferable without condition and shall remain available for the remainder of the term of the loan originally agreed to by the Administrator.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall become effective on the date of enactment of this Act.

(2) AGREEMENTS UNDER EXISTING LAW.—In the case of a borrower of an outstanding loan made by the Federal Financing Bank and guaranteed by the Rural Electrification Administration under section 306 of the Rural Electrification Act of 1936 (7 U.S.C. 936), if the Administrator of the Rural Electrification Administration determined prior to the date of enactment of this Act that such borrower was eligible to prepay, or if such borrower prepaid, an advance on the loan under section 306A of such Act (as in effect prior to the amendment made by subsection (a)), the borrower may prepay any advance received and not repaid by the date of enactment of this Act under any combination of terms and conditions applicable to such prepayments under section 306A of the Rural Electrification Act of 1936 (as in effect prior to the amendment made by subsection (a) or as amended by subsection (a)). No sum in addition to the payment of the outstanding principal balance of any loan advances prepaid shall be charged as the result of the prepayment.

(3) REGULATIONS.—Within 30 days after the date of enactment of this Act, the Secretary of Agriculture shall issue regulations to carry out the amendment made by this section.

(4) PREPAYMENT FACILITATION.—In issuing regulations to carry out the amendment made by this section, the Secretary shall—

(A) facilitate prepayment of Federal Financing Bank loan advances;

(B) provide for full processing of each prepayment request within 30 days after its submission to the Rural Electrification Administration; and

(C) except as specifically and directly provided in section 306A of the Rural Electrification Act of 1936, impose no restriction that—

(i) increases the cost to borrowers of obtaining private financing for prepayment under such section;

(ii) delays the full processing of prepayment requests; or

(iii) inhibits the ability of such borrowers to enter into prepayment arrangements under such section.

SEC. 8202. USE OF FUNDS.

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

"SEC. 312. USE OF FUNDS.

"A borrower of a loan made for electrification purposes may, without restriction or prior approval of the Administrator, invest its own funds or make loans or guarantees, not in excess of 15 percent of its total utility plant.".

SEC. 8203. CUSHION OF CREDIT PAYMENTS PROGRAM.

Title III of the Rural Electrification Act of 1936 (as amended by section 8202 of this Act) is amended by adding at the end thereof the following new section:

"SEC. 313. CUSHION OF CREDIT PAYMENTS PROGRAM.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—The Administrator shall develop and promote a program to encourage borrowers to voluntarily make deposits into cushion of credit accounts established within the Rural Electrification and Telephone Revolving Fund.

"(2) INTEREST.—Amounts in each cushion of credit account shall accrue interest to the borrower at a rate of 5 percent per annum.

"(3) BALANCE.—A borrower may reduce the balance of its cushion of credit account only if the amount obtained from the reduction is used to make scheduled payments on loans made or guaranteed under this Act.

"(b) USES OF CUSHION OF CREDIT PAYMENTS.—

"(1) IN GENERAL.—

"(A) CASH BALANCE.—Cushion of credit payments shall be held in the Rural Electrification and Telephone Revolving Fund as a cash balance in the cushion of credit accounts of borrowers.

"(B) INTEREST.—All cash balance amounts (obtained from cushion of credit payments, loan payments, and other sources) held by the Fund shall bear interest to the Fund at a rate equal to the weighted average rate on outstanding certificates of beneficial ownership issued by the Fund. 0

"(C) CREDITS.—The amount of interest accrued on the cash balances shall be credited to the Fund as an offsetting reduction to the amount of interest paid by the Fund on its certificates of beneficial ownership.

"(2) RURAL ECONOMIC DEVELOPMENT SUBACCOUNT.—

"(A) MAINTENANCE OF ACCOUNT.—The Administrator shall maintain a subaccount

within the Rural Electrification and Telephone Revolving Fund to which shall be credited, on a monthly basis, a sum determined by multiplying the outstanding cushion of credit payments made after October 1, 1987, by the difference (converted to a monthly basis) between the average weighted interest rate paid on outstanding certificates of beneficial ownership issued by the Fund and the 5 percent rate of interest provided to borrowers on cushion of credit payments.

"(B) GRANTS.—The Administrator is authorized, from the interest differential sums credited this subaccount and from any other funds made available thereto, to provide grants or zero interest loans to borrowers under this Act for the purpose of promoting rural economic development and job creation projects, including funding for project feasibility studies, start-up costs, incubator projects, and other reasonable expenses for the purpose of fostering rural development.

"(C) REPAYMENTS.—In the case of zero interest loans, the Administrator shall establish such reasonable repayment terms as will ensure borrower participation.

"(D) PROCEEDS.—All proceeds from the repayment of such loans shall be returned to the subaccount.

"(E) NUMBER OF GRANTS.—Such loans and grants shall be made during each fiscal year to the full extent of the amounts held by the rural economic development subaccount, subject only to limitations as may be from time-to-time imposed by law.".

SEC. 8204. RURAL TELEPHONE BANK.

(a) IN GENERAL.—Section 408(b) of the Rural Electrification Act of 1936 (7 U.S.C. 948(b)) is amended by adding at the end thereof the following new paragraphs:

"(8) The Rural Telephone Bank shall apply its most current cost of money rate at the time of each advance made under loan commitments approved after the date of enactment of the Agricultural Reconciliation Act of 1987.

"(9) A borrower with a loan from the Rural Telephone Bank may prepay such a loan (or any part thereof) by paying the face amount thereof without being required to pay the prepayment penalty set forth in the note covering such loan, if such prepayment is made not later than September 30, 1988.".

(b) REGULATIONS.—The Governor of the Rural Telephone Bank shall issue regulations to carry out the amendment made by subsection (a) within 30 days after the date of enactment of this Act. Such regulations shall implement paragraphs (8) and (9) of section 408(b) of the Rural Electrification Act of 1936 (as added by subsection (a)) without the addition of any restrictions not set forth in such paragraphs.

Subtitle C—Miscellaneous

SEC. 8301. STUDY OF USE OF AGRICULTURAL COMMODITY FUTURES AND OPTIONS MARKETS.

The last sentence of section 1742 of the Food Security Act of 1985 (7 U.S.C. 1421 note) is amended by striking out "1988" and inserting in lieu thereof "1989".

SEC. 8302. AUTHORIZATION OF APPROPRIATIONS FOR PHILIPPINE FOOD AID INITIATIVE.

Section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)) is amended by adding at the end thereof the following new paragraph:

"(12) There is authorized to be appropriated for fiscal year 1988, in addition to any other funds authorized to be appropriated, $1,000,000 for technical assistance for the sale or barter of commodities under paragraph (7) to strengthen nonprofit private organizations and cooperatives in the Philippines.".

SEC. 8303. RURAL INDUSTRIALIZATION ASSISTANCE.

Section 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(c)) is amended—

(1) by inserting "and private nonprofit corporations" after "public bodies"; and

(2) by striking out "to facilitate development of" and inserting in lieu thereof "to finance and facilitate development of small and emerging".

SEC. 8304. PLANT VARIETY PROTECTION FEES.

Section 31 of the Plant Variety Protection Act (7 U.S.C. 2371) is amended to read as follows:

"SEC. 31. PLANT VARIETY PROTECTION FEES.

"(a) IN GENERAL.—The Secretary shall, under such regulations as the Secretary may prescribe, charge and collect reasonable fees for services performed under this Act.

"(b) LATE PAYMENT PENALTY.—On failure to pay such fees, the Secretary shall assess a late payment penalty. Such overdue fees shall accrue interest as required by section 3717 of title 31, United States Code.

"(c) DISPOSITION OF FUNDS.—Such fees, late payment penalties, and accrued interest collected shall be credited to the account that incurs the cost and shall remain available without fiscal year limitation to pay the expenses incurred by the Secretary in carrying out this Act. Such funds collected (including late payment penalties and any interest earned) may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments.

"(d) ACTIONS FOR NONPAYMENT.—The Attorney General may bring an action for the recovery of charges that have not been paid in accordance with this Act against any person obligated for payment of such charges under this Act in any United States district court or other United States court for any territory or possession in any jurisdiction in which the person is found, resides, or transacts business. The court shall have jurisdiction to hear and decide the action.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this Act.".

SEC. 8305. ANNUAL APPROPRIATIONS TO REIMBURSE THE COMMODITY CREDIT CORPORATION FOR NET REALIZED LOSSES.

(a) IN GENERAL.—The first sentence of section 2 of Public Law 87-155 (15 U.S.C. 713a-11) is amended by striking out ", commencing with the fiscal year ending June 30, 1961" and inserting in lieu thereof "by means of a current, indefinite appropriation".

(b) OPERATING EXPENSES.—No funds may be appropriated for operating expenses of the Commodity Credit Corporation except as authorized under section 2 of Public Law 87-155 to reimburse the Corporation for net realized losses.

(c) EFFECTIVE DATE.—This section and the amendment made by this section shall apply beginning with fiscal year 1988.

SEC. 8306. FEDERAL CROP INSURANCE.

It is the sense of Congress that, in carrying out the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation—

(1) should not be required to assume 100 percent of all loss adjustments in the Federal crop insurance program; and

(2) should assume and perform the loss adjustment obligations of a reinsured company if the Corporation determines that such company's loss adjustment performance and practices are not carried out in accordance with the applicable reinsurance agreement.

SEC. 8307. ETHANOL USAGE.

(a) FINDINGS.—Congress finds that—

(1) the United States is dependent for a large and growing share of its energy needs on the Middle East at a time when world petroleum reserves are declining;

(2) the burning of gasoline causes pollution;

(3) ethanol can be blended with gasoline to produce a cleaner source of fuel;

(4) ethanol can be produced from grain, a renewable resource that is in considerable surplus in the United States;

(5) the conversion of grain into ethanol would reduce farm program costs and grain surpluses; and

(6) increasing the quantity of motor fuels that contain at least 10 percent ethanol from current levels to 50 percent by 1992 would create thousands of new jobs in ethanol production facilities.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Administrator of the Environmental Protection Agency should use authority provided under the Clean Air Act (42 U.S.C. 7401 et seq.) to require greater use of ethanol as motor fuel.

TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 9001. DEFENSE AND DOMESTIC DISCRETIONARY SPENDING LIMITS.

(a) AGGREGATE ALLOCATIONS FOR DEFENSE.—The levels of budget authority and budget outlays for fiscal years 1988 and 1989 for major functional category 050 (National Defense) shall be:

(1) Fiscal year 1988:

(A) New budget authority, $292,000,000,000.

(B) Outlays, $285,400,000,000.

(2) Fiscal year 1989:

(A) New budget authority, $299,500,000,000.

(B) Outlays, $294,000,000,000.

(b) AGGREGATE ALLOCATIONS FOR DOMESTIC DISCRETIONARY SPENDING.—The levels of total budget authority and total budget outlays for fiscal years 1988 and 1989 for all discretionary spending in categories other than major functional category 050 (National Defense) shall be:

(1) Fiscal year 1988:

(A) New budget authority, $162,900,000,000.

(B) Outlays, $176,800,000,000.

(2) Fiscal year 1989:

(A) New budget authority, $166,200,000,000.

(B) Outlays, $185,300,000,000.

(c) POINT OF ORDER IN THE SENATE ON AGGREGATE ALLOCATIONS FOR DEFENSE AND DOMESTIC DISCRETIONARY SPENDING FOR FISCAL YEAR 1989.—

(1) Except as provided in paragraph (5), it shall not be in order in the Senate to consider any concurrent resolution on the budget for fiscal year 1989 (including a conference report thereon), or any amendment to such a resolution, that would fail to be consistent with the allocations in subsections (a) and (b) for such fiscal year.

(2) Paragraph (1) may be waived or suspended by a vote of three-fifths of the

Members of the Senate, duly chosen and sworn.

(3) If the ruling of the presiding officer of the Senate sustains a point of order raised pursuant to paragraph (1), a vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of such ruling. Debate on any such appeal shall be limited to two hours, to be equally divided between, and controlled by, the Majority and Minority Leaders, or their designees.

(4) For purposes of this section, the levels of new budget authority, spending authority as described in section 401(c)(2), outlays, and new credit authority for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

(5) This subsection shall not apply if a declaration of war by the Congress is in effect or if a resolution pursuant to section 254(a) of the Balanced Budget and Emergency Deficit Control Act of 1985 has been enacted.

(d) ALLOCATION BY COMMITTEES ON APPROPRIATIONS FOR FISCAL YEAR 1989.—The Committees on Appropriations of each House shall, after consulting with the Committee on Appropriations of the other House, make their subdivisions for fiscal year 1989 under section 302(b)(1) of the Congressional Budget and Impoundment Control Act consistent with the allocations in subsections (a) and (b) for such fiscal year.

SEC. 9002. RESTORATION OF FUNDS SEQUESTERED.

(a) ORDER RESCINDED.—Upon the enactment of deficit reduction provisions of this Act and the appropriations legislation for fiscal year 1988 sufficient to achieve the deficit reduction contemplated by the summit agreement on deficit reduction, the final sequester order issued by the President on November 20, 1987, pursuant to section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 is hereby rescinded.

(b) AMOUNTS RESTORED.—Except as otherwise provided in section 4014, any sequesterable resource that has been reduced or sequestered by the final sequester order described in subsection (a) is hereby restored or revived and shall be available to the same extent as if the final sequester order had not been issued.

SEC. 9003. SUBMISSION OF PRESIDENT'S BUDGET.

(a) DATE OF SUBMISSION.—Section 1105(a) of title 31, United States Code, is amended by striking out "February 5 in 1986" and inserting in lieu thereof "January 25 in 1988".

(b) CONFORMING AMENDMENTS.—(1) Section 300 of the Congressional Budget Act of 1974 is amended by inserting "(January 25 in 1988)" after "First Monday after January 3".

(2) Section 1109(a) of title 31, United States Code, is amended—

(A) by striking out all beginning with "On or before" through "in 1986)" and inserting in lieu thereof "Concurrently with each budget submitted pursuant to section 1105(a)", and

(B) by striking out "the budget for the following fiscal year" and inserting in lieu thereof "such budget".

SEC. 9004. TECHNICAL AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT.

(a) REFERENCES IN SECTION.—Except as otherwise specifically provided, whenever in this section an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Congressional Budget and Impoundment Control Act of 1974.

(b) REVISION OF TABLE OF CONTENTS.—Section 1(b) is amended by striking "Disapproval of proposed deferrals" and inserting "Proposed deferrals".

(c) REDESIGNATION OF SUBPARAGRAPH HEADINGS.—Section 3(a)(7) (as amended by section 106(a) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987) is amended by—

(1) striking section 3(a)(7)(C);

(2) redesignating section 3(a)(7)(D) as 3(a)(7)(C);

(3) redesignating section 3(a)(7)(E) as 3(a)(7)(D);

(4) redesignating section 3(a)(7)(F) as 3(a)(7)(E);

(5) redesignating section 3(a)(7)(G) as 3(a)(7)(F);

(6) redesignating section 3(a)(7)(H) as 3(a)(7)(G); and

(7) redesignating section 3(a)(7)(I) as 3(a)(7)(H).

(d) GRAMMATICAL CLARIFICATION OF SECTION 305(c).—Section 305(c) (as amended by section 209 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987) is amended by inserting a comma after "therewith".

(e) SUBSTITUTION OF "PROPOSED" FOR "MADE" WITH REGARD TO AMENDMENTS IN COMMITTEE.—Section 252(c)(2)(F)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985 (as amended by section 102(a) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987) is amended by striking "made" and inserting "proposed".

SEC. 9005. SALE OF RURAL DEVELOPMENT NOTES.

(a) Sales Required.—The Secretary of Agriculture, under such terms as the Secretary may prescribe, shall sell notes and other obligations held in the Rural Development Insurance Fund established under section 309A of the Consolidated Farm and Rural Development Act in such amounts as to realize net proceeds to the Government of not less than $600,000,000 from such sales during fiscal year 1989.

(b) NONRECOURSE SALES.—The second sentence of section 309A(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a(e)) is amended by—

(1) inserting "and other obligations" after "Notes"; and

(2) striking out the period at the end thereof and inserting in lieu thereof the following: ", including sale on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes or other obligations sold by the Secretary on a nonrecourse basis shall be relieved of any responsibilities that might have been imposed had the borrower remained indebted to the Secretary.".

(c) CONTRACT PROVISIONS.—Consistent with section 309A(e) of the Consolidated Farm and Rural Development Act, as amended by subsection (b), any sale of notes or other obligations, as described in subsection (a), shall not alter the terms specified in the note or other obligation, except that, on sale, a note or other obligation shall not be subject to the provisions of section 333(c) of the Consolidated Farm and Rural Development Act.

(d) ELIGIBILITY TO PURCHASE NOTES.—Notwithstanding any other provision of law, each institution of the Farm Credit System shall be eligible to purchase notes and other obligations held in the Rural Development Insurance Fund and to service (including the extension of additional credit and all other actions necessary to preserve, conserve, or protect the institution's interest in the purchased notes or other obligations), collect, and dispose of such notes and other obligations, subject only to such terms and conditions as may be agreed to by the Secretary of Agriculture and the purchasing institution and as may be approved by the Farm Credit Administration.

(e) LOAN SERVICING.—Prior to selling any note or other obligation, as described in subsection (a), the Secretary of Agriculture shall require persons offering to purchase the note or other obligation to demonstrate—

(1) an ability or resources to provide such servicing, with respect to the loans represented by the note or other obligation, that the Secretary deems necessary to ensure the continued performance on the loan; and

(2) the ability to generate capital to provide the borrowers of the loans such additional credit as may be necessary in proper servicing of the loans.

SEC. 9006. SALE OF RURAL HOUSING LOANS.

(a) REQUIRED SALES TO PUBLIC.—The Secretary of Agriculture shall take such actions as may be necessary to ensure that loans made under title V of the Housing Act of 1949 are sold to the public in amounts sufficient to provide a net reduction in outlays of not less than $1,590,000,000 in fiscal year 1988, and $2,350,000,000 in fiscal year 1989 from the proceeds of such sales.

(b) PROCEDURES AND TERMS OF SALES.—

(1) ESTABLISHMENT OF GUIDELINES.—The Secretary of Agriculture shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including the kind of protections that should be provided to borrowers and terms that will ensure that the sale of the loans will be made at the lowest practicable cost to the Federal Government.

(2) ASSISTANCE BY FEDERAL FINANCING BANK.—In selling loans to the public under subsection (a), the Secretary of Agriculture shall use the Federal Financing Bank as an agent to sell the loans, unless the Secretary determines that the sale of loans directly by the Secretary will result in a higher rate of return to the Federal Government. If the Secretary determines to sell loans directly under this paragraph, the Secretary shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

(c) REPORTS TO CONGRESS.—

(1) NOTIFICATION OF INITIAL LOAN SALE.—Not less than 20 days before the initial sale of loans under subsection (a), the Secretary of Agriculture shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal years 1988 and 1989.

(2) REPORTS BY SECRETARY.—The Secretary of Agriculture shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Secretary under this section. Each report shall include

the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of the loans. The Secretary shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1989.

(3) REPORTS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Secretary of Agriculture described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Secretary as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

(d) RELATION TO OTHER LAW.—The sale of loans under this section shall not be subject to paragraph (2) or (3) of section 517(d) of the Housing Act of 1949.

SEC. 9007. SALE OF EXPORT-IMPORT BANK LOANS.

Section 16 of the Export-Import Bank Act of 1945 (12 U.S.C. 635 et seq.) is amended to read as follows:

"SEC. 16. SALE OF BANK LOANS.

"(a) REQUIRED SALES TO PUBLIC.—The Board of Directors shall take such actions as may be necessary to ensure that loans made by the Bank under this Act are sold to the public in amounts sufficient to provide a net reduction in outlays of not less than $500,000,000 in fiscal year 1988 and $500,000,000 in fiscal year 1989 from the proceeds of such sales.

"(b) PROCEDURES AND TERMS OF SALES.—

"(1) ESTABLISHMENT OF GUIDELINES.—The Board of Directors shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and term applicable to the sale of the loans, including terms that will ensure that the sale of the loans will bring the highest possible return to the Federal Government.

"(2) ASSISTANCE BY FEDERAL FINANCING BANK.—In selling loans to the public under subsection (a), the Board of Directors shall use the Federal Financing Bank as an agent to sell the loans, unless the Board of Directors determines that the sale of loans directly by the Export-Import Bank will result in a higher rate of return to the Federal Government. If the Board of Directors determines to sell loans directly under this paragraph, the Board shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

"(c) REPORTS TO CONGRESS.—

"(1) NOTIFICATION OF INITIAL LOAN SALE.—Not less than 20 days before the initial sale of loans under subsection (a), the Board of Directors shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal years 1988 and 1989.

"(2) REPORTS BY BANK.—The Board of Directors shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Board of Directors under this section. Each such report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of such loans. The Board of Directors shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1989.

"(3) REPORTS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Board of Directors described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Board of Directors as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

"(d) SECURITIES LAWS NOT APPLICABLE TO SALES.—The sale of any loan under this section shall be deemed to be a sale of exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) and section 3(a)(12) of the Securities Act of 1934 (15 U.S.C. 78c(a)(12)). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations as may be necessary in the public interest or for the protection of investors.".

SEC. 9010. SALE OF COMMUNITY DEVELOPMENT LOANS.

The Secretary of Housing and Urban Development, under such terms as the Secretary shall prescribe, shall sell Community Development loans in such amounts as to realize net proceeds to the Government of not less than $120,000,000 in fiscal year 1988 and $50,000,000 in fiscal year 1989.

SEC. 9011. SALE OF COLLEGE FACILITIES AND HOUSING LOANS.

Section 783 of the Higher Education Act of 1965 is amended by striking out "$314,000,000" and inserting in lieu thereof "$414,000,000".

SEC. 9012. SALE OF BUREAU OF RECLAMATION LOANS.

The Secretary of the Interior, under such terms as the Secretary shall prescribe, shall sell Bureau of Reclamation loans made pursuant to the Distribution System Loans Act, as amended (43 U.S.C. 421a-421d), the Small Reclamation Projects Act, as amended (43 U.S.C. 422a-422l), and the Rehabilitation and Betterment Act, as amended (43 U.S.C. 504-505) in such amounts as to realize net proceeds to the Government of not less than $130,000 in fiscal year 1988. In the conduct of such sales the Secretary is authorized and directed to take such actions as he deems appropriate to accommodate, effectuate and otherwise protect the rights and preserve the obligation so the United States and the borrowers under the contracts executed to provide for repayment of such loans.

SEC. 9013. SALE OF MEDICAL FACILITIES LOANS.

The Secretary of Health and Human Services, under such terms as the Secretary shall prescribe, shall sell Medical Facilities loans in such amounts as to realize net proceeds to the Government of not less than $40,000,000 in fiscal year 1988.

SEC. 9014. SALE OF BUREAU OF HEALTH MAINTENANCE LOANS.

The Secretary of Health and Human Services, under such terms as the Secretary shall prescribe, shall sell Health Maintenance loans in such amounts as to realize net proceeds to the Government of not less than $20,000,000 in fiscal year 1988.

SEC. 9015. PUBLIC FACILITIES LOAN SALES.

(a) IN GENERAL.—The Secretary of Housing and Urban Development shall take such actions as may be necessary to ensure that loans made pursuant to title II of the Housing Amendments of 1955 are sold to the public in amount sufficient to provide a net reduction in outlays of not less than $120,000,000 during fiscal year 1988, and $50,000,000 during fiscal year 1989.

(b) PROCEDURES AND TERMS OF SALES.—The Secretary of Housing and Urban Development shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including the kinds of protections that should be provided to borrowers and terms that will ensure that the sale of the loans will be made at the lowest practicable cost to the Federal Government.

(c) REPORTS TO CONGRESS.—The Secretary of Housing and Urban Development shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Secretary under this section. Each report shall include the guidelines established under subsection (b), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of the loans. The Secretary shall submit the first report under this subsection not later than 60 days after the date of enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1989.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, December 9, 1987, to hold a hearing on the U.S. role in international efforts to control and prevent the global spread of the AIDS epidemic on U.S. foreign policy.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on December 9, 1987, to hold a hearing on judicial nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. BYRD. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs, be authorized to meet during the session of the Senate on Wednesday, December 9, 1987, to hold a hearing on S. 1236, to reauthorize housing relocation under the Navajo-Hopi Relocation Program, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs, be authorized to meet during the session of the Senate on Wednesday, December 9, 1987, to hold a markup on S. 1703, amendments to the Indian Self Determination and Education Assistance Act; a hearing on S. 1236, to reauthorize housing relocation under the Navajo-Hopi Relocation Program, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

INTERNATIONAL MBA PROGRAM

● Mr. DANFORTH. Mr. President, the Amos Tuck School of Business Administration at Dartmouth College announced today that it would join with the International University of Japan [IUJ] to establish the first international management MBA Program in Japan. In conjunction with the program, the two institutions have agreed to establish a United States-Japan management research institute in Japan. The curriculum of the new graduate program in international management will be based on the Tuck model, and faculty will be drawn from both Tuck and IUJ and from other American business schools.

Given the recent turbulence in United States-Japan relations, today's announcement is a positive development that merits mention. The Japanese came to the United States seeking our assistance in setting up the MBA Program. They chose a prestigious college with an excellent program. Tuck is the oldest graduate school of management in the country, and has focused on one degree program—a professional master's degree—since its founding. One of my daughters currently attends Dartmouth, and I have been very impressed with the leadership and the curriculum at the school.

The interconnected nature of world markets is apparent to all of us, and cooperative efforts such as the Tuck-IUJ venture are especially important. I am heartened by today's announcement because this new graduate program promises to enhance Japanese and American understanding of each other's business environment and practices. Congratulations are in order for Tuck and IUJ as they move forward with this innovative cooperative effort.●

URANIUM POLICY AND THE FREE TRADE AGREEMENT

● Mr. JOHNSTON. Mr. President, last Friday, a letter was sent to the President signed by 24 Senators about uranium supply policy. The letter urges the administration to recognize in the proposed trade agreement with Canada the uranium supply policy approved by the Energy and Natural Resources Committee on October 1, 1987, when it ordered S. 1846 reported.

The letter sent to the White House Friday makes clear that a strong domestic uranium industry and a strong enrichment enterprise are essential to the National interest—both from an energy and a national security perspective. It asserts the view that the uranium supply policy set forth in S. 1846 is compatible with the proposed trade agreement.

Mr. President, I am pleased to note that both the majority leader and the minority leader and many other concerned Senators joined the leadership of the Energy Committee in signing this letter.

The uranium supply policy endorsed by the Energy Committee is contained in title I of S. 1846, the Uranium Revitalization, Tailings Reclamation and Enrichment Act of 1987, now pending on the Senate Calendar. S. 1846 repeals the requirement of section 161v. of the Atomic Energy Act to restrict the enrichment of foreign uranium for domestic use in order to maintain a viable domestic uranium industry. For an interim period, the legislation replaces this restriction with a sliding scale of charges for the use of foreign uranium above specified levels. All restrictions on uranium use would end on December 31, 2000.

The proposed trade agreement with Canada, like the legislation, seeks to repeal section 161v. and eliminate restrictions on the enrichment of foreign uranium. S. 1846 would repeal this restriction entirely, but the trade agreement, and its implementing legislation can repeal this restriction only as it applies to Canada. Needless to say, this would create serious inequities in our trade relations with other countries.

It is true that for a limited time, S. 1846 substitutes for section 161v. a system of limited charges for the use of foreign uranium, but two points should be made about this approach. First, all charges are removed after the year 2000. Second, there are many other commodities addressed in the agreement where a phased approach is the preferred path to free trade. Third and more important, even while the system of charges is in effect, 37.5 percent of the domestic market before 1994 and 50 percent of the domestic uranium market between 1994 and 2000 is preserved for foreign suppliers without payment of any charges. In addition, grandfathering of existing contracts under the legislation means that the foreign share of the domestic market will be even higher in practice.

What is proposed in S. 1846 is a reasonable, phased approach to free trade in uranium that will give our domestic uranium industry a chance to revitalize its operations and compete in world markets. The Senators who signed the letter to the President last week believe this approach can and should be accommodated within the framework of the Canadian free trade agreement and its implementing legislation.

Mr. President, I urge those who are responsible for negotiating the trade agreement with Canada to consider promptly and urgently the need to accommodate the national uranium policy set forth in S. 1846.

I ask that the text of the letter sent to the President on this important subject be included in the RECORD.

The letter follows:

U.S. SENATE,
COMMITTEE ON ENERGY
AND NATURAL RESOURCES,
Washington, DC, December 1, 1987.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: Uranium is now second only to coal as an energy source for electricity production in the United States, accounting for almost 20% of domestic electric power generation. Use of uranium as a fuel in nuclear power plants is now displacing over two million barrels per day of imported oil, and is saving the nation $15 billion per year in foreign oil payments. Similarly, the Nation continues to have a substantial reliance upon uranium for its national defense requirements.

A strong domestic uranium industry and a strong domestic enrichment enterprise are required if the United States is to ensure its ability to meet the demand for nuclear energy and its defense responsibilities. Ironically, at this critical time both the uranium mining industry and the uranium enrichment enterprise are severely depressed. Indeed, the uranium industry has been formally declared to be "non-viable" by the Secretary of Energy. There is a broad consensus that the uranium enrichment enterprise simply cannot continue to operate as it has in the past.

In order to resolve these problems, a comprehensive program is desperately needed.

Fortunately, the uranium producers and nuclear utilities have cooperatively sought development of such a program through the legislative process. On October 1, 1987, the

Senate Energy and Natural Resources Committee ordered reported S. 1846, a comprehensive bill that ensures this country's utility and defense requirements for uranium will be met. Among other things, this legislation eliminates any restriction on the enrichment of foreign uranium for domestic use. For an interim period, this restriction is replaced by imposing a sliding scale of charges for the use by utilities of foreign uranium above specified levels. All restrictions expire automatically on January 1, 2001. The bill also totally reorganizes the uranium enrichment enterprise to permit operation as a continuing, commercial enterprise on a profitable and efficient basis.

We believe the uranium supply policy embodied in this legislation is compatible with the proposed U.S.-Canadian Trade Agreement. Canada does not sell uranium to the United States for military purposes. Therefore, it is imperative that any trade agreement with Canada recognize the importance of the U.S. uranium industry to our national defense.

The legislation reported by the Committee on Energy and Natural Resources revitalizes the domestic uranium mining industry in a manner that achieves the uranium trade objectives of Agreement. The bill repeals section 161(v) of the Atomic Energy Act, which requires the Secretary of Energy to restrict the enrichment of foreign uranium.

The bill also preserves existing contracts for the purchase of foreign uranium. It imposes limited charges for the use of foreign uranium in the next few years, while preserving a substantial share of the U.S. uranium market for foreign producers. In fact, taking into account the provision respecting preservation of existing contracts, the net effect of the legislation is to preserve 50 percent of the domestic market for imported uranium during the period of transition to a free market.

In summary, S. 1846 provides for a phased implementation of free trade in uranium. We understand that a gradual approach will also be proposed in implementing other areas of the U.S.-Canadian Agreement. We urge that in developing the Administration's proposals for implementing legislation for the uranium provisions of the Agreement, the Administration take advantage of the consensus among uranium producers, electric utilities, and Members of Congress that is reflected in the legislation reported by the Committee on Energy and Natural Resources.

Sincerely,

Wendell Ford, J. Bennett Johnston, Pete V. Domenici, Jim McClure, Jeff Bingaman, Jake Garn, Orrin Hatch, Don Nickles, Bob Dole, Chic Hecht, Ted Stevens, Steve Symms, Bill Armstrong, Richard Shelby, Malcolm Wallop, Al Simpson, John Breaux, David I. Boren, John W. Warner, Mitch McConnell, Dennis DeConcini, John McCain, Frank H. Murkowski, Robert C. Byrd.●

BIPARTISAN FOREIGN POLICY

● Mr. BOSCHWITZ. Mr. President, on December 1, the op-ed page of the Washington Post contained an article by Senator BOREN and Senator DANFORTH that should not and cannot be ignored by the rest of us in this body. I ask that their article be printed in the RECORD at the end of my remarks.

I want to congratulate my two colleagues for addressing one of the most serious problems facing this country: The recently increasing difficulty to develop and maintain a consistent foreign policy that provides leadership to the rest of the free world. Instead we now find ourselves more often than not mired in partisan squabbles and in mistrust between the executive and legisative branches.

These two problems are greatly complicated by congressional attempts to micromanage foreign policy in what my two colleagues quite rightly term "incessant and irresponsible tinkering" on "everything from the maximum allowable height above sea level for the site of the Soviet Embassy in Washington to the precise manner in which our forces are to be deployed in the Perisan Gulf."

Mr. President, America's global interests are best served by a bipartisan foreign policy. Our history shows that our goals as a Nation have been advanced when we have been able to speak with one voice. In the aftermath of World War II, a broad, bipartisan agreement emerged, recognizing a new international environment that necessitated a vigorous and united American involvement in the defense of freedom around the world. And America largely succeeded. We rebuilt Western Europe and created an alliance of democracies that persists to this day.

The external challenges we now confront are just as numerous and just as serious. But they will be much more difficult to meet if we as a Nation are so internally divided and if we as a Congress are so intent on carrying our legitimate oversight responsibilities to such heights of absurdity. So I applaud my two colleagues for addressing this issue. I welcome their suggestion that we develop mechanisms for reestablishing broad bipartisan principals, in cooperation with the executive branch, to guide our foreign policy, and I look forward to working with them in helping to achieve this goal.

The article follows:

WHY THIS COUNTRY CAN'T LEAD

(By David L. Boren and John C. Danforth)

Partisan bickering among those who are supposed to be our political leaders has gone too far. It has become a greater threat to our nation than external pressures from the Eastern Bloc or internal weaknesses in the economy. Throughout America, and indeed the world, perceptive people see what is happening to us. They do not doubt America's ability to meet difficult challenges once we unite with a common sense of purpose, but they are truly frightened that our leaders are unable to put political differences behind them in a common effort to support obvious national interests.

Since we arrived in the Senate about a decade ago, partisanship within the institution has increased alarmingly. Some partisan one-upmanship may be expected in domestic matters, but it has spilled over into foreign affairs. In consequence, the stable and resolute foreign policy one should expect from the leader of the free world has been undermined by ongoing antagonism and turmoil between Congress and the executive branch of our government.

On one hand, Congress is alarmed at the freebooting adventurism of a go-it-alone executive, as exemplified by the Iran-contra affair. On the other hand, the executive branch complains that Congress consists of 535 secretaries of state who cannot resist any opportunity to interfere with arms negotiations and to micromanage foreign relations. The result is that mutual suspicion and a state of flux have supplanted the predictability and sense of purpose which characterize a leadership position in world affairs.

Unlike parliamentary systems, our Constitution divides foreign policy responsibility between two independent branches of government. The president is the commander in chief, but Congress gives its advice and consent to treaties and to the appointment of ambassadors. In recent times, Congress has confused this shared responsibility for foreign affairs with incessant and irresponsible tinkering. Routine authorization and appropriations bills have given members almost limitless opportunity to weigh in on everything from the maximum allowable height above sea level for the site of the Soviet Embassy in Washington to the precise manner in which our forces are deployed in the Persian Gulf.

Last year the Senate conducted 20 roll-call votes on aid to the Nicaraguan contras in an unending effort to fine-tune the precise circumstances under which military or humanitarian assistance might be offered.

During recent consideration of the State Department authorization bill, 86 floor amendments were added dealing with such matters as the proper decorum for motorcades carrying foreign visitors around our nation's capital (e.g. no honking), and the closing of our embassy in Antigua. Most of these amendments had received no committee consideration and little debate on the Senate floor.

This fall, the Senate wrestled for weeks over whether to invoke the War Powers Act in connection with American's presence in the Persian Gulf, and finally decided, reversing a previous vote, to defer for two months any judgment on the practice of reflagging and escorting oil tankers.

That sort of vacillation typifies one of Congress' most egregious habits in the field of foreign policy. Whether it is in the Persian Gulf or Central America, SDI or SALT II compliance, fundamental questions go unresolved. Everything is seen as subject to future debate. All issues remain on the table, or can be brought back to the table for further consideration. Even the much-heralded compromise between Congress and the administration on how to interpret the ABM Treaty was an agreement to put off a resolution of the issue until next year.

The free world looks to the United States for leadership, but who can follow a leader that cannot decide where it is going and that sets out first in one direction and then in another?

In light of the debacle of Vietnam and the Iran-contra fiasco, it is unreasonable for any administration to expect Congress to confer upon it the blind confidence of another Tonkin Gulf Resolution. Yet, surely there is room for a modus vivendi between an autonomous executive and a tinkering Congress. The time has come for rebuilding a truly bipartisan foreign policy in which congressional deference in the execution of policy

would be offered in exchange for legitimate consultation and trust in the formulation of policy. Congress would agree to restrain its back-seat driver activities in exchange for a role in planning the trip.

The beginning of a new bipartisan foreign policy might be patterned after the efforts of a Democratic administration and a Republican Senate in the post-World War II era. Then, Secretary of State George Marshall, Undersecretary Robert Lovett and Foreign Relations Committee Chairman Arthur Vandenberg met informally at the Wardman Park Hotel to draft a general statement of the principles of American foreign policy. Their meetings formed the basis of Senate Resolution 239, the Vandenberg Resolution, which, in turn, set the stage for the North Atlantic Alliance and gave added support to the Marshall Plan.

In many ways, the now aging and tattered consensus that emerged from those meetings and played a dominant role in American foreign policy throughout the postwar era remains the closest thing we have to a foreign policy blueprint for today. Our generation has not had the will to create a new one.

We suspect that an informal meeting between a limited member of administration and congressional leaders would be able to set forth a broad consensus on the fundamental objectives and principles of foreign policy that could provide the starting point for a new spirit of bipartisanship.

What is needed is both a general statement of foreign policy principles in the manner of the Vandenberg Resolution and an ongoing process for working out specific differences as they arise, but before they are ripe for legislative action.

If the views we have expressed make sense, then the question remains: Where do we go from here? The answer depends on what response, if any, we evoke from the administration and members of Congress. We would hope for an informal meeting of no more than a handful of administration representatives and interested members of Congress for the purposes of (1) drafting a statement of agreed foreign policy principles, and (2) exploring a system for resolving foreign policy disputes. If the call is for volunteers to convene such a meeting then count us in.●

NOTICE OF DETERMINATIONS BY THE SELECT COMMITTEE ON ETHICS

● Mr. HEFLIN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35, for Ms. Cynthia Shade, a member of the staff of Senator BENNETT JOHNSTON, to participate in a program in the Taipei, Taiwan, and sponsored by the Soochow University, from November 27, 1987 to December 6, 1987.

The committee has determined that participation by Ms. Shade, in the program in the Taipei, Taiwan, at the expense of the Soochow University, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35, for Mr. Richard F. Kaufman, a member of the staff of the Joint Economic Committee, to participate in a program in The Hague, sponsored by the Institute for Foreign Policy Analysis, a domestic, educational organization, and the Netherlands Atlantic Commission, a foreign, educational organization, from October 9–10, 1987.

The committee has determined that participation by Mr. Kaufman in the program in The Hague, at the expense of the Institute for Foreign Policy Analysis and the Netherlands Atlantic Commission, is in the interest of the Senate and the United States.●

NUCLEAR MATERIALS PRODUCTION

● Mr. McCLURE. Mr. President, for a number of years, I have been most disturbed by the fragile condition of the Nation's nuclear materials production complex. Much of the complex, particularly the five reactors that produce tritium and plutonium, were built in the 1950's and early 1960's, and it seemed quite clear to me that we might well be vulnerable to the disruption of our nuclear material supply. I believed this would seriously affect the Nation's deterrent force.

During the early 1970's, I supported the planning for a replacement production reactor and successfully fought the Carter administration's attempt to terminate the planning of what became the new production reactor only to see it dropped in the early years of the Reagan administration for budgetary reasons.

I take no pleasure in noting here today that my fears were justified. Through a series of bizarre circumstances, our production capability has been reduced to less than one-fourth what it was only 2 years ago.

I believe this situation is a matter of deep and growing concern to many of us here in the Senate. Actions directed toward resolving the problem have been taken by the Senate Armed Services Committee, the Senate Energy and Natural Resources Committee and the Senate Appropriations Committee. Recently, the Senate provided funding to start, once again, work on materials production replacements in an amendment requiring the Department of Energy to develop an acquisition strategy report that analyzes whether or not two or more production reactors should be procured and constructed, concurrently or sequentially. This amendment also requires DOE to analyze the use of alternative reactor technologies, look at safety, environmental and licensing features and the amortization of reactor capital and operating costs through the sale of byproduct steam.

These features have not been adequately addressed in the past, and they must be, for it is unconscionable to waste the energy that would be produced in the form of heat during reactor operation. The sale of byproduct steam would reduce the cost of the material produced during reactor operation. Furthermore, it seems to me that the present crisis offers us a unique opportunity to draw from our most advanced state-of-the-art technologies so that within 10 years we will be able to open the door on the safest, most environmentally benign reactors that this country has ever built for any purpose.

This could be a reactor such as Matthew L. Wald describes in the New York Times, November 11, 1987. Titled, "A Reactor that Can't Melt Down" Wald writes that some engineers and utility analysts think it is time to develop a second generation of reactors that would be meltdown proof. He notes that proponents of gas-graphite technology hope the Department of Energy will build a graphite plant to produce nuclear materials.

Wald goes on to explain the passive safety features that make a melting of the nuclear fuel impossible, even if the operators make errors and all the mechanical safety equipment fails. Though graphite was given a bad name during the Chernobyl accident, the gas reactor Wald describes differs considerably from the Soviet reactor; the major difference being that in this second generation reactor the rising temperature tends to choke off the nuclear reaction and shut the reactor down. This is the reverse of the situation in Chernobyl. In this second generation reactor, the graphite holds the fuel—multilayered ceramic and carbon pellets about the size of a crayon. The graphite also acts as a moderator and absorbs the heat of the nuclear reaction and gives it off to the helium gas that is used as a coolant. Because graphite can withstand extremely high temperatures, as well as other safety features, designers of the gas-cooled reactor say their reactor can not meltdown even under worst case accident conditions.

I feel it is most important to the Nation from the standpoint of safety and the advancement of reactor technologies that options such as the one described by Wald be given serious consideration by the Department of Energy as it is developing the acquisition strategy mandated by Congress.

Mr. President, I ask that Mr. Wald's article from the New York Times be printed in the RECORD:

A REACTOR THAT CAN'T MELT DOWN?

More than a decade after the last order was placed in this country for a commercial

nuclear plant, some engineers and utility analysts think it is time to start developing a second generation of reactors that would be meltdown-proof. Their hope is that these reactors would be available when the demand for power picks up and when cost or environmental impact makes fossil fuels unattractive.

A step toward a new reactor technology could come in the next few weeks as the Department of Energy entertains proposals for a new reactor to produce bomb fuel. Proponents of gas-graphite, technology largely bypassed in this country, are hoping that the Government will construct a graphite plant that could be a model for a new generation of civilian reactors.

Graphite has had a bad name since the April 1986 accident at the Soviet Union's Chernobyl plant. There, the burning graphite core sent radioactive contaminants into the upper atmosphere, and around the world. But the reactor being proposed for the Department of Energy has a different design, which the manufacturer, GA Technologies, Inc., said would not permit the melting of nuclear fuel.

The company says the plant "does not depend on active engineered safety features or human actions for safety of the public or the investment," and that passive features make a melting of the nuclear fuel impossible even if the operators make errors and all the mechanical safety equipment fails.

The reason is the substitution of graphite, which withstands extreme heat, for water, which heat drives off, and for metal, which heat will melt.

In all nuclear reactors, atoms of uranium or plutonium are struck by neutrons and split. This process generates heat and releases more neutrons, which split other atoms, continuing the chain reaction.

To slow the neutrons to the speed at which they are most likely to cause another atom to split, reactors use a medium called a moderator. Civilian reactors in this country, with one exception, use ordinary water (called light water) as the moderator.

The Soviet Union and a few other nations use graphite. The Department of Energy operates one graphite plant, the N-Reactor, in Hanford, Wash., to produce plutonium for bombs.

The design by GA, formerly General Atomics, differs markedly from the ones at Hanford and Chernobyl. A major difference from the Chernobyl plant is that as temperature rises, it tends to choke off the nuclear reaction. At Chernobyl, the opposite was true.

Unlike either the Chernobyl design or the N-Reactor, the GA design does not use metal to encase the nuclear fuel. Instead, GA uses a multilayered ceramic and carbon pellet, little bigger than a grain of sand. Linden Blue, GA's vice chairman, describes these pellets as pressure vessels—the term that in light-water plants is used to describe the multi-ton steel containers in which the water is heated to 600 degrees Fahrenheit.

The pellets are formed into cylinders about the size of a crayon, and the cylinders are placed into blocks of graphite a little bigger than a coffee table.

As the uranium in the pellet is split, the heat and the neurtons flow out of the pellet. But the "daughter atoms" created by the fission, which are the main source of radioactivity, are trapped inside.

The graphite holds the fuel in place and moderates the neurtons' speed in normal operation, the graphite blocks absorb the heat of the reaction and give it off to the helium gas that is used as a coolant. The gas is then used to boil water into steam to make electricity.

In an accident, the graphite can withstand very high temperatures without damage, even if the helium ceases to circulate. In contrast, in a light-water reactor, the water that functions as a moderator and coolant can boil away, and the metal used to hold the fuel in place can melt.

The graphite reactor is meltdown-proof, according to the designers, because it cannot reach 3,272 degrees Fahrenheit, the temperature at which the fuel pellets could break open and allow the radiation to escape.

The reactor is designed to be buried in a silo, and even if the helium stops circulating, and if back up heat-removal systems fail, heat will radiate to the silo walls and into the soil, holding temperatures to a maximum of 2,912 degrees Fahranheit.

GA's proposal for a military reactor differs little in design from its civilian plant. The plan primarily adds "target elements" of lithium-six, a type of lithium tha turns to tritium when it aborbs a neutron. The tritium is a type of hydrogen that is the fuel of H-bombs.

One commercial demonstration graphite plant was built: Fort St. Vrain, in the Colorado town of the same name. The plant is not a good advertisement for the technology, having produced only about 10 percent of the power that would have resulted if it could have run around the clock at 100 percent of capacity. GA says that Fort St. Vrain demonstrated the high quality of the fuel, and the benefits of using helium as the coolant instead of water. But the helium circulator was an untried design, and broke down frequently.

For a new plant, GA says it would use a design proved in Europe, where several graphite-moderated, helium-cooled reactors are operating succeussfully.

GA is competing with some well-established vendors. The Westinghouse Electric Corporation, which designs light water reactors, and Bechtel, the architect-engineering concern that has built many of them, have signed an agreement to bid for the construction of a light-water reactor or a heavy-water reactor, whichever the Department of Energy chooses.●

EDITORIAL BY NEW YORK CITY MAYOR EDWARD I. KOCH ON AIDS

● Mr. MOYNIHAN. Mr. President, I rise today to draw the attention of my colleagues to an op-ed in the November 8, 1987, New York Times by New York City's mayor, Edward I. Koch. It is in reference to an amendment adopted by the Senate to the Labor, HHS, and Education appropriations bill which prohibits the Centers for Disease Control from funding AIDS education programs that promote, encourage, or condone homosexual behavior. Mayor Koch opposed this language—so did I, one of two Senators to do so.

Mayor Koch's own words are persuasive indeed, and I need not summarize them. But I do think great praise is due to the mayor for speaking out for those who are otherwise not heard. What we have now in New York City and other major cities in this country is a crisis—pure and simple. We in the Senate must recognize this and offer assistance in every way we know how. What we must not do is hamper educational efforts that save lives by placing ambiguous restrictions on the funding of such efforts to combat AIDS.

I ask that Mayor Koch's op-ed be placed in the RECORD in full at this point.

The editorial follows:

[From the New York Times, Nov. 8, 1987]

SENATOR HELMS' CALLOUSNESS TOWARD AIDS VICTIMS

[By Edward I. Koch]

"We have got to call a spade a spade," said Senator Jesse Helms in offering an amendment to the fiscal 1988 apprpriations bill for the Departments of Labor, Health and Human Services, and Education, "and a perverted human being a perverted human being." Ironic comments, indeed, given the profound perversity of the policy his amendment advances.

It prohibits the Federal Centers for Disease Control from funding AIDS programs that "promote, encourage or condone homosexual activities." The Senate passed it, 96 to 2. Only 47 House members had the good sense and common decency to resist homophobic hysteria and oppose the amendment.

Mr. Helms introduced it because he's upset with the New York's Gay Men's Health Crisis. The organization has established a brilliant reputation in caring for and counseling those with AIDS and in educating others on how to prevent the spread of AIDS.

It serves gay men—Mr. Helms's "perverts"—because they're a primary AIDS risk group. Gays comprise about 10 percent of the United States' adult population, or 20 million people. If only half are male, 10 million men are at risk and in need of education and counseling on how to cut the risk. That's why the Gay Men's Health Crisis and organizations like it around the country exist.

The amendment, protests Senator Edward M. Kennedy, is "toothless" and "a foolish exercise." Then why did he vote to make it the law of the land, particularly since it ignores the proved effectiveness of AIDS education efforts and severely impedes our ability to expand them?

To date, New York has had 11,513 AIDS cases reported; of these, 6,605 have died. Of the total cases, 55 percent are homosexual or bisexual men. Among these, the Gay men's Health Crisis and city educational efforts have helped contribute to a decline in the seroconversion rate to 1 percent annually. In nonscientific terms, this means that if you took blood samples from homosexual or bisexual men one year and found them not infected with the AIDS virus, there's only a 1 percent chance that samples from the same men would be infected the next year.

Among intravenous drug users there's an 8 percent seroconversion rate. Obviously, education changes behavior among those whose faculties aren't impaired and enslaved by needles and drugs.

Gay Men's Health Crisis materials, complains Senator Helms, use blunt words and sexually graphic illustration that "perpetuate the AIDS problem." But those the materials reach aren't innocents who'll be shocked by such literature. They already practice sex; they want to know how to

practice it more safely. The organization tells them and thereby helps save lives.

If we're shy with one risk group, we'll probably make the same mistake with others. Today, AIDS is found principally among men who engage in homosexual or bisexual practices or intravenous drug abuse. By 1991, some 40,000 people in New York and 270,000 nationally may have AIDS. Some will be heterosexuals who've had intercourse with a bisexual man or a drug user. If they don't know how to protect themselves, how will they? Cutting off Federal funds to organizations like the Gay Men's Health Crisis may only help spread the disease, causing the deaths of not only homosexuals but heterosexuals of both sexes and, most tragic of all, innocent infants.

Senator Helms may not like homosexuals. But he and those who voted for the amendment should remember that homosexuals—and intravenous drug users—are the sons and daughters of families who love them. They too deserve protection against the gravest public health threat our nation faces.

Regrettably, lousy politics overwhelmed good public health policy. Apparently fearing an adverse reaction that a homophobic demagogue might inflame in their home states or districts, members of Congress gave in to homophobic hysteria. Only a few had the courage to vote against this foolish amendment. I commend Senators Daniel Patrick Moynihan and Lowell Weicker and members of New York's House delegation who joined the honor roll: Gary L. Ackerman, Bill Green, Major R. Owens, James H. Scheuer and Ted Weiss. They hold the moral high ground.

The amendment is at fait accompli. The blot on the Congress can't be erased. But what can't be undone can be uncovered. That alone may insure that future Congressional action on AIDS ignores the homophobes by supporting programs and policies that have proved so effective in fighting this tragic disease.●

NASHUA SENIOR HIGH SCHOOL GIRLS BASKETBALL TEAM

● Mr. HUMPHREY. Mr. President, today I would like to recognize the achievements of a very special group of people, the girls basketball team of Nashua Senior High School in Nashua, NH, their coach, their families and their school.

This year, the team is ranked No. 1 in the Nation in USA Today's preseason poll. The coveted rank is a testament to their talent, but more importantly, to years of dedication and hard work.

The team has established a 71 game winning streak. They have won the New Hampshire State Class L Basketball Championship for the past 3 years. Two years ago, the team finished the season ranked 5th nationwide in USA Today's poll. They continued their winning ways last year, beginning the season ranked 3d and finishing on top—ranked No. 1.

The Nashua senior high girls basketball team has built this winning tradition on the basis of key principles which deserve our recognition and praise. The team members and their coach have set their sights on a lofty goal—to be the best. They worked hard to achieve this goal by making the most of their capabilities. They pushed themselves as individuals and as a team, constantly raising their performance level. And they kept their eyes on that goal, making sacrifices to maintain that level of excellence.

Their desire has been equally matched by discipline and hard work. When they could have coasted on their talent—they did not. When they were tired or hurting and they wanted to rest—just for a moment, they did not. When they wanted to give in to the tempting array of other activities they could pursue, they did not. In short, when they could have settled for less than their best—they did not.

All along, through days filled with practices, homework, special camps, travel, games and more of the same, the team has been led by their Coach John Fagula, and supported by their families and their school. They in turn have made many sacrifices to support their daughters, sisters, students, and schoolmates.

Especially for their families—who can count the sacrifices, great and small through the years? Countless rides to and from practices and games, scaled down or eliminated family vacations in lieu of advanced training camps, the list goes on.

Their school has been behind them as well in very public and private ways. The crowds at games and rallies cheering them on are easy to see. Not so visible has been the extra time and effort put in by their teachers so the players could progress in the classroom as well as on the basketball court.

These special people also deserve our praise for making sacrifices out of love and pride so these gifted girls could achieve their maximum potential.

I am very proud of all of them. I wanted to bring their accomplishments to your attention today because their efforts and dedication should serve as models for all of us in all walks of life. Whether here in the Halls of Congress representing our constituents or on the hardwood court, or elsewhere, we must dedicate ourselves to excellence in order to achieve excellence.

The Nashua Senior High School girls basketball team has worked hard to be No. 1. I know that I am joined by my colleagues in wishing them continued success during the season ahead.●

BUDGET SCOREKEEPING REPORT

● Mr. CHILES. Mr. President, I hereby submit to the Senate the budget scorekeeping report for this week, prepared by the Congressional Budget Office in response to section 308(b) of the Congressional Budget Act of 1974, as amended. This report was prepared consistent with standard scorekeeping conventions. This report also serves as the scorekeeping report for the purposes of section 311 of the Budget Act.

This report shows that current level spending is under the budget resolution by $8.4 billion in budget authority, but over in outlays by $5.4 billion.

I ask that the report be printed in the RECORD.

The material follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 7, 1987.

HON. LAWTON CHILES,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of congressional action on the budget for fiscal year 1988 and is current through December 4, 1987. The estimated totals of budget authority, outlays, and revenues are compared to the appropriate or recommended levels contained in the most recent budget resolution (H. Con. Res. 93). This report is submitted under section 308 (b) and in aid of section 311 of the Congressional Budget Act, as amended, and meets the requirements for Senate scorekeeping of Section 5 of Senate Concurrent Resolution 32.

Since my last report the President has signed Public Law 100-175, Older Americans Act Amendments of 1987, and Congress has sent to the President H.R. 2672, Veterans Home Loan Program Improvements Act of 1987, changing budget authority and outlay estimates.

With best wishes,
Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE, 100TH CONGRESS, 1ST SESSION, AS OF DEC. 4, 1987

[Fiscal year 1988—in billions of dollars]

	Current level [1]	Budget resolution H. Con. Res. 93 [2]	Current level +/− resolution
Budget authority	1,137.6	1,146.0	−8.4
Outlays	1,040.0	1,034.7	5.3
Revenues	910.1	932.8	−22.7
Debt subject to limit	2,414.6	[3] 2,565.1	−150.5
Direct loan obligations	34.0	34.6	−.6
Guaranteed loan commitments	148.9	156.7	−7.8

[1] The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval. In addition, estimates are included of the direct spending effects for all entitlement or other mandatory programs requiring annual appropriations under current law even though the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[2] In accordance with Sec. 5(a)(1)(b) the budget authority and outlays include an adjustment that reflects the amount reserved for subsequent allocation under section 302(a) of the Congressional Budget Act.

[3] The permanent statutory debt limit is $2.800 billion.

PARLIAMENTARIAN STATUS REPORT, 100TH CONGRESS, 1ST SESSION, SENATE SUPPORTING DETAIL, FISCAL YEAR 1988 AS OF CLOSE OF BUSINESS DECEMBER 4, 1987

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			898,554
Permanent appropriations and trust funds	779,621	681,502	
Other appropriations		205,550	

PARLIAMENTARIAN STATUS REPORT, 100TH CONGRESS, 1ST SESSION, SENATE SUPPORTING DETAIL, FISCAL YEAR 1988 AS OF CLOSE OF BUSINESS DECEMBER 4, 1987—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Offsetting receipts	−169,458	−169,458	
Total enacted in previous sessions	610,163	717,594	898,554
II. Enacted this session:			
Water Quality Act of 1987 (Public Law 100–4)	−2	−2	
Emergency Supplemental for the Homeless (Public Law 100–6)		−7	
Ginnie Mae Fees (Public Law 100–14)		52	
Surface Transportation and Relocation Act (Public Law 100–17)	10,969		364
Federal Employees Retirement System Technical Corrections (Public Law 100–20)	10	10	
Farm Disaster Assistance Act (Public Law 100–45)	−30	−30	
Supplemental Appropriations, 1987 (Public Law 100–71)	68	915	
Small Business Administration program and authorization amendments (Public Law 100–72)	−41	−41	
Competitive Equality Banking Act of 1987 (Public Law 100–86)		−650	−7
Credit certain air traffic controller service for retirement benefits (Public Law 100–92)		3	
Medicare and Medicaid Patient and Program Protection Act (Public Law 100–93)		3	
Balanced Budget and Emergency Deficit Control Reaffirmation Act (Public Law 100–119)		−160	
Interim extension of certain veterans' housing programs (Public Law 100–136)	677	608	
Technical amendments to laws relating to Indians (Public Law 100–153)	1	1	
Older Americans Act Amendments of 1987 (Public Law 100–175)		5	
Total enacted this session	11,652	707	357
III. Continuing resolution authority:			
Continuing Resolution, fiscal year 1988 (Public Law 100–162)	560,544	366,808	
Offsetting receipts	−30,823	−30,823	
Total continuing resolution authority	529,721	335,985	
IV. Conference agreements ratified by both Houses: Veterans Home Loan Improvement Act of 1987 (H.R. 2672)	−53	−53	
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Disaster relief	142	85	
Guarantee reserve fund	(532)	(532)	
Military service wage credit	(391)	(391)	
Food stamp program	592	341	
Uranium supply and enrichment (receipts)	−90	−90	
Federal Energy Regulatory Commission (receipts)	−6	−6	
Loan guaranty revolving fund	90	100	
National wildlife refuge fund	1	1	
Total entitlement authority	729	431	
VI. Adjustment for economic and technical reestimates	−14,650	−14,650	11,200
Total current level as of Dec. 4, 1987	1,137,562	1,040,013	910,111
1988 budget resolution (H. Con. Res. 93)	1,146,000	1,034,700	932,800
Amount remaining:			
Over budget resolution		5,313	
Under budget resolution	8,438		22,689

Note.—Numbers may not add due to rounding.●

THE BUDGET

● Mr. McCLURE. Mr. President, representatives from the House, the Senate, and the administration have recently unveiled the finished product of their long and arduous budget negotiations. Although they did their best to dress and doll up this deficit-cutting plan, it has little allure for me.

For a brief time during the negotiations, there sparked a glimmer of hope. We were informed that the negotiators might agree to reducing the cost-of-living adjustments [COLA's] for Social Security and other entitlement programs so that they are set below the rate of inflation. For just a moment, it appeared the negotiators were struck by the realization that they had the authority and opportunity to regain control of a budget which has, in the last decade, taken on a life and will of its own.

This "diet COLA" approach would ensure that all beneficiaries of Federal spending make sacrifices so that we may make our way back to sound fiscal ground. In my mind, it is unfair to hold some recipients of Federal dollars in higher esteem than others. It is unfair to say some are entitled to have their Federal payments rise with the cost of living while others see theirs eliminated or rolled back. Diet COLA may not provide the instant gratification that regular COLA does, but I can guarantee you that months and years from now you and I will be in a lot better shape for choosing the diet COLA.

We have to accept the fact that we cannot consume more than we can afford. We've got to get away from the idea that the select but substantial portion of those who benefit from Government programs are entitled to those benefits. Our Government has responsibilities, but it cannot and should not be charged with spending our country into insolvency because a certain portion of the population feels it is entitled to the same payments for perpetuity.

Just as our Government cannot abandon those who have come to depend on it—say by eliminating all benefit payments in one fell swoop—those beneficiaries have no right to abdicate their responsibilities to that same Government. All Americans have to do their part.

My friend and fellow Idahoan, STEVE SYMMS, has been making this argument year, after year. If more of our colleagues would face fiscal reality, as has STEVE, instead of worrying about their next election, we would not be in this budget mess.

I ask that the following editorial, which was published on December 8, 1987, in the Times-News of Twin Falls, ID, and commends STEVE for his political courage, be printed in the RECORD.

The editorial follows:

[From the Twin Falls (ID) Times-News, Dec. 8, 1987]

"ENTITLEMENT" THINKING MUST COME TO AN END

Sen. Steve Symms has himself in dutch with seniors this week over his recent comment that people on Social Security should help to trim the federal deficit through some combination of delayed increases and taxation of some benefits.

The hail of letters suggests that Symms is not exactly in step with that portion of his constituency over this issue. More than one letter-writer has reminded him that elections, like rain, come eventually.

But Symms, in our view and that of a good many others, is essentially correct on his point, although he may have overstated it.

Three weeks ago, The Times-News ran excerpts from an important article on the deficit and the economic mess which is now coming due.

Called "The Morning After," the article outlined the extensive spending pattern which has gripped America in recent years, the development of indexed payments, such as Social Security and military pensions, which have risen sharply and contributed to the deficit.

The stock market collapse of October was only a warning of a far-worse economic debacle to come if we do not get our house in order.

Many Americans know how this has to be accomplished. It must be done through spending reductions and higher taxes. There is no other way.

Which spending reductions? The only places are military and entitlements. Military expenditures will have to be cut. We must have quality, not exotic, pie-in-the-sky systems. Star Wars is unaffordable. If built, it would not work, but it would surely bankrupt us all.

The greatest defense the nation can create is a strong economy on Main Street, in which goods and services are sold for something reasonably above the cost to produce them, in which capital investment in education, technology and our public works infrastructure are the norm. In short, we must sacrifice, save and build.

All of us must do this. Senior citizens as a group, have made the most dramatic gains in recent years of any goup in the population. Indeed, the improving lot of seniors is one of the great untold stories of the last two decades.

But now, some of the bill is due. The word "entitlement"—meaning a government payment to which someone has a right—must be stricken from our vocabulary.

The bottom line is that neither seniors nor military pensioners—many of whom are still working—are "entitled" to an endless stream of payment increases, the cost of which is to be borne by an increasing tax burden in this generation and the next.

Social Security and military pensions are two of the largest so-called "entitlements." Neither should be cut for existing recipients. No one's check should get smaller.

But it is clear that both will have to grow less rapidly in the future. Both should be "on the table" as Congress takes up a deficit proposal which, so far, is little more than smoke and mirrors.

We have occasionally criticized Symms for his obstreperous nature. Yes, he talks sometimes before he thinks. But this time, he is taking heat unfairly for saying what many already know:

No one on this earth is "entitled" to anything. Not people. Not nations. It is time for all of us to pay our way, including "entitled" groups.●

FORMER POW BENEFITS

● Mr. CRANSTON. Mr. President, my good friend, the Senator from New Jersey [Mr. LAUTENBERG], has long been one of the Senate's great champions of those of our Nation's veterans who made such great sacrifices and endured extreme hardships as prisoners of war. Senator LAUTENBERG was a cosponsor of S. 1365, legislation I introduced with Senator GRAHAM on June 16, 1987, to improve and expand benefits for former POW's, as well as an original cosponsor of S. 9, the Omnibus Veterans' Benefits and Services Act of 1987. On December 4, the Senate passed the provisions of S. 9, including those derived from S. 1365.

In honor of his efforts, Senator LAUTENBERG was presented the New Jersey American Ex-Prisoners of War Legislator of the Year Award on October 30, 1987. The Senator from New Jersey made a moving and compassionate acceptance speech, which I commend to my colleagues, and I ask his remarks be printed in the RECORD.

The remarks follow:

SPEECH BY SENATOR FRANK R. LAUTENBERG BEFORE THE NEW JERSEY EX-POW'S, OCTOBER 30, 1987

Members of New Jersey's American Ex-Prisoners of War, New Jersey veterans leaders, I am pleased to be with you today, and honored to accept your legislator of the year award.

I know that this is a proud year for New Jersey's ex-POW's as well. Your commander, Walt Furca, was elected National Director of the American Ex-Prisoners of War, and Department Commander of the State Unit.

And, symbolizing your group's commitment and staying power, you found a permanent home for your organization in Garfield. In keeping with New Jersey's tradition of leadership, I understand the building dedicated in August is the first building in America solely dedicated to American Ex-Prisoners of War activities.

I am deeply honored to be named the American Ex-Prisoners of War's Legislator of the Year. I've worked hard to represent the needs of ex-POW's, and all veterans in Congress.

Few Americans have given as much to the cause of freedom, or paid as heavy a price, as those who were held prisoner during times of war.

Your treatment was often brutal, harsh, and unforgiving. Many of you still bear the physical and emotional scars of that imprisonment.

You lived months or years in the hands of our enemies, dependent on them for each bit of food, each stick of shelter. You suffered mistreatment, even torture. You saw fellow prisoners beaten or executed at the whim of your captors. Your loyalty was tested by pain, malnutrition or numbing fatigue. The large number of POW's who died in captivity is eloquent testimony to the conditions you had to endure.

In such an environment, the price of loyalty was high. But you paid that price. You endured. You persevered. And ultimately you triumphed.

The 80,000 former prisoners of war living in America today are a proud affirmation of the loyalty of the American soldier. You are proof of the enduring strength of the human spirit.

When you were finally discharged, you were told to put the past behind you. Get on with your lives. But I know that for some, that has not been easy. Especially not for those who face permanent injury every day of your lives. The visible scars of your experience are always with you.

To add insult to injury, it has not always been easy to get compensated for your suffering. While your captivity increased the chance of future disability or illness, it lessened your ability to prove where it came from. Those who held you captive did not stop to keep the health records needed to establish service connected disability.

And after your discharge, most of you did not undergo thorough physical exams. You wanted to put your nightmarish experiences behind you. And the armed services in turn did not require physicals. Still, you continued to suffer from the effects of your imprisonment.

That is why I cosponsored the bill that recognized that reality, and attempts to make up for it. It is the bill allowing ex-POW's to qualify for presumptive compensation for peripheral neuropathy, irritated bowel syndrome, and peptic ulcer disease. These may be hard words to pronounce. But those of you who suffer from these diseases know well what they are.

Despite the absence of medical records, medical studies have established that the conditions many of you experienced in captivity—severe malnutrition, extreme stress, and exhausting physical exertion—are significant risk factors for these three diseases. So under this bill, former prisoners held captive longer than 30 days don't need to show proof of injury to qualify for compensation.

This bill takes another step toward recognizing that the starvation, deprivation, and brutality so common to the experiences of POW's could damage any body system. The bill has been favorably considered by the Senate Veterans' Affairs Committee and is awaiting action on the Senate floor.

But I am pleased to accept this award not only on behalf of New Jersey's Ex-POW's, but all its veterans.

During my time in the Senate, I have tried to be responsive to the needs of all of New Jersey's almost one million veterans. I have fought for bigger medical care budgets for veterans in the Senate Budget and Appropriations Committee. And I have continued to push for the outpatient satellite clinic we have all waited for for so long. That clinic is on its way to becoming a reality. The VA will solicit offers for clinic space within the next two weeks, and the clinic space should be determined this spring. It should be up and running by 1989.

I know that an outpatient clinic won't solve the medical care problems of our state. It is only a beginning. There are problems at the East Orange VA. There are long waits for service. I am planning to visit that facility soon to find out what can be done.●

STATEMENT ON WOMEN'S VIETNAM MEMORIAL

● Mr. QUAYLE. Mr. President, Senate Joint Resolution 215 was recently introduced into the Senate. This bill authorizes and directs the Secretary of the Interior to work with the Vietnam Women's Memorial Project [VWMP] to commemorate the substantial and heroic contributions of women in our effort during the sixties and seventies on behalf of the people of Vietnam.

The commitment of the women who served in Vietnam cannot be underestimated. They served their country with courage and dignity and their patriotism was as strong as any of those who fought in the conflict.

There are over 1,160,000 women veterans of U.S. military service still alive. Of these, 7,000 to 20,000 served in Vietnam. The total number of women who contributed to the effort is close to 250,000.

Ninety percent were nurses in the Army, the Navy, and the Air Force. They also served as physicians and personnel in the Medical Service Corps, as well as in a civilian capacity within the Red Cross, the USO, the CIA, and the U.S. Agency for International Development.

Diane Evans, one of the original members of the project was a 20 year old nursing student in August 1968 when she went to Vietnam. Within 6 months she was the head nurse on the surgical unit at Pleiku near the Cambodian border.

There are eight names inscribed on the memorial here in Washington. They are the women who are officially recognized as having died during their service in Vietnam. Carol Ann Elizabeth Drazba and Elizabeth Ann Jones were second lieutenants assigned to the 51st Field Hospital in Saigon. Eleanor Grace Alexander was a captain at the 85th Evac and Hedwig Diane Orlowski was a first lieutenant at the 67th Evac. Pamela Dorothy Donovan was a second lieutenant assigned to the 85th Evac in Qui Nhon. First lieutenant Sharon Ann Lee died from shrapnel wounds when the 312th Evac at Chu Lai was hit by rockets. Annie Ruth Graham was chief at the 91st Evac in Tuy Hoa. And Mary Therese Klinker was an Air Force flight nurse assigned to Clark AFB in the Phillipines who died when her C-5A Galaxy crashed outside of Saigon while evacuating Vietnamese orphans. Mary Therese was from Lafayette, IN.

In 1980, Public Law 98-297 directed the establishment of the Vietnam Memorial for "the men and women of the Armed Forces of the United States who served in the Vietnam War." Since then we have seen the construction of Maya Lin's wall, and Roger Brodin's statue "The Three Fighting Men."

I believe the Vietnam Veteran's Memorial Project is a fitting and final addition to the Vietnam memorial. The statue will serve as a symbol to those women who served in Vietnam that their heroic deeds are recognized. It will also serve to educate those to the dedication and selflessness of these women.

I have, therefore, added my name as a cosponsor to Senate Joint Resolution 215 and support the efforts of the Vietnam Women's Memorial Project.●

DEFICIENCY PAYMENT CAP

● Mr. HARKIN. Mr. President, in the next few days we will be hearing a lot about budget savings that might be realized through modification of the law defining "person" for the purpose of the $50,000 Farm program payment limitation. In an effort to facilitate understanding of this complex issue, I asked the Congressional Research Service [CRS] to briefly analyze the current situation and the major alternatives available to us and how each would affect farmers. A copy of this study follows my remarks.

I expect to offer an amendment to the reconciliation bill that would require strict adherence to the $50,000 deficiency payment limitation. This amendment will save $50 million in fiscal year 1988 and $435 million in fiscal year 1989 according to CBO estimates.

Earlier this year my Nutrition and Investigations Subcommittee held hearings into the abusive schemes to get around the payment cap. These schemes have increased USDA deficiency payments by billions of dollars. Moreover, they are throwing the payments out of proportion. For instance, in 1986, 1½ percent of participating farmers got 13 percent of total cash deficiency payments.

My amendment will end these abuses, target income assistance to operators of family sized farms, and help reduce the deficit.

As I read the CRS study comparing my proposed amendment to the House passed bill, the most significant difference is that my amendment adheres to the intent of the 1985 farm bill. Under my amendment the payment limitation remains at $50,000 and the total limit on payments including Findlay payments, gain from marketing loans and deficiency payments remains at $250,000. Under the House-passed bill the deficiency payment limitation would effectively be increased to $100,000 and the overall cap would be raised to $500,000. Clearly, this is not the direction we want to go, and I would urge my colleagues to support my amendment.

I ask that the study to which I referred be printed in the RECORD.

The material follows:

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, November 20, 1987.

To: Honorable Tom Harkin (Attention: Bob Andros).

From: Carl Ek, Analyst in Agricultural Policy, Environment and Natural Resources Policy Division.

Subject: Comparison of Farm Program Payment Limitation Proposals.

This memorandum is in response to your request for a brief description and comparison of two legislative proposals that would make changes in the manner in which direct farm program payments are disbursed.

THE PAYMENT LIMITATION

Under current law, direct Federal commodity program payments paid to farmers are basically limited to $50,000 per person.[1] The word "person" can apply not just to individuals, but to entities such as corporations, partnerships, tenants-in-common, joint ventures, trusts, and estates. Through incorporating, forming joint operations, or using other strategies, farmers have been able to circumvent legally the payment limit and quality for additional maximum payments from the U.S. Department of Agriculture (USDA).

A recent General Accounting Office (GAO) study revealed that farm reoganizations have increased dramatically during this decade.[2] The media have reported stories of large farms subdividing to form dozens of smaller units primarily to qualify for multiple Federal farm program payments. Public and congressional criticism has focused both on the perceived inequity of large payments being made to "megafarms" as well as on increased Federal outlays associated with allowing benefits for thousands of additional "paper farms."

However, some in the agricultural community have argued that current farm programs have depressed commodity prices, denying large farmers a reasonable return from the market. Unlike small and medium-size farmers, large farmers are constrained by the payment limit and are thus not able to be fully compensated by Government income supports for lower revenues derived from the market. Given such circumstances, some farm group representatives argue, large farmers are justified in using any legal means at hand to bolster their incomes.

Farmers have employed several methods to increase the number of "persons" on farm operations and thereby receive additional payments. Among them:

Incorporation. When a corporation is formed, the corporate entity qualifies as an additional "person" for purposes of applying the payment limit.

Joint operations. When a joint operation (joint venture, general partnership, etc.) adds members, each new member of the operation qualifies for a separate payment.

Minor children. Minors may be counted as separate persons if they are beneficiaries of land-owning irrevocable trusts, or if they have a farm and live separate from (or have guardians other than) their parents; under these conditions, children qualify for separate maximum payments.

Custom farming. Several farmers may increase their payments through forming a corporate or joint organization, adding a person, titling their equipment over to the entity, and then having the entity custom farm their operation.

Investors. The division of a farm into smaller land units and the cash lease of those units to investors qualifies the owner and each investor for separate payment.

Substantive change. A farm may increase the number of persons receiving payments by proving that there has been a "substantive change" in the farming operation. For example, when the size of a farm is increased or decreased by 20 percent or more, that constitutes a substantive change, and new persons may be added.

Entities with similar membership. Individuals may pair up to form several corporations, so that each individual and each corporation is eligible for a separate payment.

The remainder of this memorandum summarizes changes suggested by Representative Jerry Huckaby and Senator Tom Harkin to regulate the above-mentioned reorganization devices.

THE HUCKABY BILL

As part of its budget reconciliation package, the House Agriculture Committee on October 15, 1987 approved a measure introduced by Representative Huckaby that would make changes in the application of the payment limitation. It was also reported out of the committee the same day as separate legislation (H.R. 3487). Representative Huckaby's bill would make the following changes:

Individuals, incorporation and joint operations. A person would be limited to payments from three entities in which he has a substantial (more than 10 percent) interest. The entity receiving payments must notify its members of the new law, and the entity must submit to USDA on request the names and Social Security numbers of holders of substantial beneficial interest. Persons holding interest in more than the maximum number of entities must notify USDA, indicating those entities for which they wish to receive payments. Payments for additional entities in which the person holds an interest would be reduced by an amount proportional to the amount of interest the individual holds. Failure to notify USDA of all interest in farming entities would result in the person having payments for all entities in which he has an interest computed on a proportional basis.

Corporations and like entities would have to be considered "actively engaged in farming," defined as follows: the entity would have to contribute capital, equipment, or land; to entity's stockholders or members would have to contribute labor or management; the entity's proportion of profits or losses have to be on a par with its contribution; and the entity would have to share in the risk of business.

If a joint operation makes a separate contribution of capital, equipment, or land, and shares in profits, losses, and risks, then the partners contributing labor or management would be considered as actively engaged in farming.

Minor children. Person status is limited to "adult" family members who make a significant contribution of personal labor or management and who share risk.

Custom farming. The new provisions describing what constitutes active engagement in farming would replace current regulations treating custom farming.

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[1] This limit applies to combined deficiency and diversion payments. There are separate payment limits for other programs, such as the Conservation Reserve Program, the disaster assistance program, the marketing loan, and the Findley provision.

[2] See: U.S. General Accounting Office. Farm Payments: Farm Reorganizations and Their Impact on USDA Program Costs. GAO/RCED-87-120BR. Washington, D.C. April 1, 1987.

Investors. To qualify as persons, cash tenants would have to contribute both personal labor or management and equipment.

Substantive change. USDA would not be able to allow farming operations that have been changed to add additional persons unless those changes were determined to be bona fide and substantive; however, the addition to a farming operation of an adult family member providing personal labor or management would be considered a substantive change.

Entities with similar membership. The number of entities from which a person can receive separate payments would be limited to three (see above).

In addition to the above revisions, the Huckaby bill would make changes in the following areas:

Marriage. Husband and wife would be treated as one person, except in cases in which each spouse had brought an independent farming operation into the marriage; each spouse would then be treated as a separate person for those operations.

USDA training. USDA would be required to carry out an education program to train appropriate USDA personnel in proper implementation procedures for the payment limitation.

Suspension of participation. Any producer who knowingly concocted a scheme in order to avoid the payment limitation would be ineligible to receive farm commodity program payments for two years.

Foreign land ownership. Corporations that are not 90 percent U.S.-owned, and certain foreign individuals would not be eligible for U.S. farm program payments.

Government agencies. No State, county, city, or agency would be eligible for payments for land it owns that it farmed for public functions.

THE HARKIN PROPOSAL

This month, Senator Tom Harkin unveiled a proposal which would tighten up application of the payment limit. The Harkin measure contains elements of earlier proposals developed by USDA, GAO, and Representative Huckaby.[3] It would make the following changes:

Incorporation and joint operations. Entities and associations—corporations, partnerships, etc.—would be treated in the same fashion for purposes of the payment limitation. The bill would do this by basing the amount of payments to an entity upon the number of its members who are actively engaged in farming. Payments to members of the entity would be attributed to the member in proportion to the member's interest in the entity, and combined total payments to an individual could not exceed $50,000. An exception would apply to an entity that farms independently of its members; such an entity would be considered as a separate person.

Investors. Passive investors would be eliminated by requiring that for a lessee to be counted as a separate person, he would have to be actively engaged in farming, which is defined as meaning someone who makes a significant contribution of land, cash, or equipment, and personal labor or management.

Entities with similar membership. If one or more persons have a 50 percent or larger interest in two or more entities, all such entities would be treated as one person.

Foreign land ownership. Corporations that are not 90 percent U.S.-owned, and certain foreign individuals would not be eligible for U.S. farm program payments.

If the above revisions are approved by Congress, USDA has announced that it will exercise its administrative authority to make the following additional changes:[4]

Minor children. Minors would be counted as one person with their parents except when the former maintain a separate residence and farm an operation independent of their parents.

Custom farming. If an organization that custom farms a farming operation has an interest in that operation, the custom farmer and all the individuals or entities using his services would be counted together as one person.

Substantive change. Farmers or entities that reduce farm size would not be allowed to increase the number of persons on the operation. Increases in farm size would have to take place before new persons could be added. The number of persons added would have to be justifiable by the increase in size.

SUMMARY COMPARISON

The Huckaby bill and the Harkin proposal differ more in degree than in intent. In general, the Huckaby bill is more restrictive than current law, and the Harkin proposal is more stringent still.

Proponents of Senator HARKIN's measure point out that it is a bipartisan proposal—it leans heavily on recommendations made by USDA—and argue that it would finally put an end to the payment limit evasions that have attracted so much unfavorable attention to farm programs in recent years. These programs are intended to help the small- to medium-size family farm, proponents argue, not corporate giants.

Supporters of Representative Huckaby's bill claim that, while certain provisions of current law may need correction, the Harkin approach would be both disruptive to the farming sector and inequitable to many family farms. In addition, the current combination of commodity programs and the payment limit denies large farms an equitable income—either from the marketplace or the Government, supporters of the Huckaby bill claim, arguing that their proposal strikes a reasonable balance between the business concerns of producers and the perceived need to tighten up on the payment limit.

Under the Harkin proposal, each individual would be limited to $50,000 in total payments; under Huckaby, it would be $100,000. For example, under current law, one entity composed of six individuals qualified for a total of $1,050,000 in payments.[5] Under Huckaby, they would recieve a maximum of $600,000; under Harkin, $300,000.

The Harkin proposal would treat all entities—corporate-type and joint organizations—on an equal basis by basing the amount of payments to an entity on the number of its members who are actively engaged in farming. The Huckaby bill would allow a farmer to have full payments for one operation and up to 50 percent of the maximum payment from two additional entities.

The substantive change rule under Harkin would prohibit farmers from reducing the size of their operations, adding persons, and receiving more payments. Any increase in farm size would have to occur before the addition of persons, and the number of persons added would have to bear a reasonable relation to the amount of land added. The Huckaby bill would grant the Secretary of Agriculture authority to determine when changes are bona fide and substantive, and would justify the addition of persons. However, the bill permits the addition to a farming operation of an adult family member providing personal labor or management to be considered a substantive change.

On at least one issue, the Harkin proposal is less restrictive than Representative Huckaby's: payments to States. Under the Huckaby bill, States subdivisions of States, or their agencies would no longer be exempted from the payment limitation. Supporters of this action charge that such payments have constituted a disguished form of revenue sharing; State school systems and penal institutions should not be dependent upon Federal farm programs for funding, they argue. Under Senator Harkin's proposal, payments to States would continue. Backers of the status quo note that in the past three years, only 21 State entities have received more than the $50,000 limit.[6] Supporters argue further that the costs attributable to the payment limit exemption is relatively small—approximately $7 million out of a total farm program budget that tops $20 billion. Although the amount is small by Federal standards, proponents claim, these revenues loom large in the budgets of several States; a sudden cutback could have serious impact upon the budgets of Montana, Washington, California, and Texas, to name just a few States.

Both bills would reduce USDA outlays for direct payments, the Harkin proposal somewhat more than the Huckaby bill. Analysts disagree over just how much each proposal would save and when the savings would occur. Observers argue that such savings estimates for the two proposals are difficult to determine at this point, given uncertainty over the amount and timing of advance deficiency payments for the 1988 crop year and subsequent years.

If you have any questions or need additional information, please call me at 287-7283.●

SENATOR ROTH MAKES STRONG CASE AGAINST BUDGET COMPROMISE

● Mr. KASTEN. Mr. President, I call to the attention of my colleagues an excellent article by the distinguished Senator from Delaware, Senator BILL ROTH, entitled "Budget Accord Is Top Heavy With Taxes."

I agree with the Senator that the budget compromise "does little to cut Government spending and promote continued economic prosperity." The proposed 2-year $23 billion tax increase does nothing to address the underlying cause of the Federal deficit:

[3] U.S. General Accounting Office. Farm Payments: USDA's Proposed Changes to the $50,000 Payment Limit Could Be Improved. GAO/RCED-87-190. Washington, D.C. September, 1987.

[4] See: U.S. Department of Agriculture. Office of the Secretary. Report to Congress by the Secretary of Agriculture with Respect to the Implementation of the Maximum Payment Limitation. Washington, D.C. March 10, 1987.

[5] See: U.S. General Accounting Office. Farm Payments: Basic Changes Needed to Avoid Abuse of the $50,000 Payment Limit. GAO/RCED-87-176. Washington, D.C. July 20, 1987. P. 24.

[6] U.S. General Accounting Office. Farm Payments: Payments to Entities Exempt From the $50,000 Limit and to Foreign Addresses. GAS/RCED-88-37BR. Washington, D.C. November, 1987. p. 43.

the growth rate of Government spending. Under the budget compromise, spending is slated to rise over 4 percent over fiscal 1987. This is over twice the growth rate of spending that occurred from fiscal 1986 to 1987.

The bottom line is that higher taxes aren't the answer. The combination of continued economic growth and meaningful spending restraint is the only way to reduce the Federal budget deficit.

As we begin debate on the budget compromise, I urge my colleagues to consider some of the points raised by Senator ROTH regarding the flaws in this package. I ask that the article be printed in the RECORD.

The article follows:

[From the Wall Street Journal, Dec. 3, 1987]

BUDGET ACCORD IS TOP HEAVY WITH TAXES

(By William V. Roth Jr.)

The long-awaited deficit-reduction package may have soothed the financial markets temporarily, but it does very little to cut government spending and promote continued economic prosperity. Most Americans will be amazed to learn that, despite suggestions to the contrary, federal spending will still increase by $50 billion if this plan is enacted.

We are not cutting programs, but merely reducing spending from an inflated baseline number. At the same time, these purported savings are being used to persuade legislators to enact a $23 billion tax increase.

I am adamant in support for lowering the deficit, but Washington has met this urgent cry with little more than a package that will perpetuate the federal spending machine. I favor real reduction, not spending cuts from an inflated baseline. It is important that we understand the causes of the budget deficit and not panic and rush in an unthinking manner to adopt policies that will undermine the vitality of our economy.

According to news reports, the package will cut discretionary spending by $2.6 billion, defense by $5 billion and entitlements by $4 billion. In reality, discretionary spending is projected to grow by $7 billion, defense by $3 billion, and entitlements by $37 billion. These are increases of 1%, 4% and 8%, respectively, over last year's level.

Washington must send a message to Wall Street. But it must be the right message: not the spend and spend, tax and tax policies that signal business as usual. It is no small irony that at the same time we are talking about deficit reduction, Congress is enacting a new catastrophic health insurance program whose financing is questionable at best, and at worst, could severely increase the federal deficit.

Unlike some of my colleagues in Congress, I do not believe the American people are undertaxed. There is no shortage of revenue. According to Congressional Budget Office estimates, revenue will rise an average of nearly $70 billion annually for each of the next five fiscal years. In other words, by fiscal 1992 almost $350 billion will be added to federal revenues with no change in tax law.

The most recent fiscal year shows the best way to cut the deficit: Restrain federal spending growth. During fiscal 1987 revenues rose 11% ($85 billion), while federal outlays increased by only 1.2% ($12 billion). Spending as a share of gross national product climbed above its postwar average of about 20% to 24% in fiscal 1986 before declining to 23% in fiscal 1987. The revenue share of GNP, in contrast, is projected to remain around 19% for the foreseeable future, slightly above its postwar average. These figures show conclusively that federal spending has outspaced revenues. It is Congress's inability to restrain spending that has generated sizable deficits—not, as some would argue, a reduction in individual taxes achieved through the Kemp-Roth tax cuts.

As the co-author of the Kemp-Roth personal tax reduction legislation that became the centerpiece of the Economic Recovery Tax Act 1981, I can attest that it was designed solely to restore incentives and the potential for continued economic growth and job creation. Since it took effect, the nation has experienced unprecedented economic expansion. In October alone, more than 500,000 jobs were created. The unemployment rate is near its lowest rate at any time since the end of 1979. We are in our 60th month of peacetime economic expansion. Even after "Black Monday" I and II, the Dow Jones Industrial Average is more than twice its 1981 level, and still about the level of January.

Though the deficit declined by one-third in fiscal 1987, it remains too large. Continually large deficits threaten the economy and our standard of living. This is a serious enough reason for deficit reduction. Excessive federal spending and deficits do need to be brought under control. That responsibility lies with Congress: Not a dime of federal spending can be appropriated without the consent of Congress.

What should Congress do? Here are a few ideas:

First, legislate a two-year nominal freeze on discretionary spending for domestic and defense programs. This does not include a reduction in Social Security cost-of-living increases.

Second, enact the spending reductions already agreed upon by the congressional authorizing committees.

Third, phase out subsidies on agricultural products.

Fourth, enact a federal employee early-retirement option and close unnecessary military bases. Each of these proposals could save billions of dollars over the next five years.

Fifth, trim growth in military procurement by posting acquisition of additional aircraft carriers.

Sixth, cancel spending for necessary energy, water, highway and urban development action grant projects. The Highway Authorization bill passed by Congress over the president's veto contained more than $1 billion in unnecessary "demonstration projects."

Seventh, review the recommendations put forth by the Grace Commission for additional savings through reduced waste and mismanagement.

Eighth, enact a line-item veto authority for the president to reduce pork-barrel spending by Congress. In addition Congress should follow a majority of our states and adopt a balanced-budget amendment.

The deficit agreement—top heavy with taxes—is not the way to meet the challenge we face. We cannot tax our way into continued prosperity. Tax increases were among the policies the Hoover administration adopted after the 1929 market crash. If we have learned anything from the history of the stock market, it should be clear that we should keep as much money as possible in the pockets of the American people and reduce the deficit by reducing government spending.●

SENATOR WILLIAM V. ROTH'S COLUMN ON DEFICIT REDUCTION

● Mr. ARMSTRONG. Mr. President, I commend to my colleagues attention a column written by Senator WILLIAM V. ROTH on the proposed deficit reduction summit agreement which appeared in the Wall Street Journal on December 3, 1987.

Senator ROTH aptly notes that there is little in the way of spending reductions in the summit plan and that it relies almost exclusively on tax increases. I share his deep concern with that imbalance, because there is, in fact, no shortage of Federal revenues, only a lack of will to make difficult decisions on spending.

Senator ROTH suggests a number of ways in which Congress could begin to control spending. I think my colleagues will find the good sense of this article a most useful way to begin thinking about the pending budget reconciliation and continuing appropriations bills.

I ask that the article be printed at this point in the RECORD.

The article follows:

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I am adamant in support for lowering the deficit, but Washington has met this urgent cry with little more than a package that will perpetuate the federal spending machine. I favor real reduction, not spending cuts from an inflated baseline. It is important that we understand the causes of the budget deficit and not panic and rush in an unthinking manner to adopt policies that will undermine the vitality of our economy.

According to news reports, the package will cut discretionary spending by $2.6 billion, defense by $5 billion and entitlements by $4 billion. In reality, discretionary spending is projected to grow by $7 billion, defense by $3 billion, and entitlements by $37 billion. These are increases of 1%, 4%, and 8%, respectively, over last year's level.

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able at best, and at worst, could severely increase the federal deficit.

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Fourth, enact a federal employee early-retirement option and close unnecessary military bases. Each of these proposals could save billions of dollars over the next five years.

Fifth, trim growth in military procurement by postponing acquisition of additional aircraft carriers.

Sixth, cancel spending for unnecessary energy, water, highway and urban development action grant projects. The Highway Authorization bill passed by Congress over the president's veto contained more than $1 billion in unnecessary "demonstration projects."

Seventh, review the recommendations put forth by the Grace Commission for additional savings through reduced waste and mismanagement.

Eighth, enact a line-item veto authority for the president to reduce pork-barrel spending by Congress. In addition, Congress should follow a majority of our states and adopt a balanced-budget amendment.

The deficit agreement—top heavy with taxes—is not the way to meet the challenge we face. We cannot tax our way into continued prosperity. Tax increases were among the policies the Hoover administration adopted after the 1929 market crash. If we have learned anything from the history of the stock market, it should be clear that we should keep as much money as possible in the pockets of the American people and reduce the deficit by reducing government spending.●

INFORMED CONSENT: MASSACHUSETTS

● Mr. HUMPHREY. Mr. President, I call upon my colleagues to support S. 272 and S. 273 which require informed consent for women who undergo abortions. Too many women are caught in a psychological trap when they are faced with this important decision. Because of their vulnerable positions, they often choose to have abortions because they are totally unaware of any other alternatives. They also suffer from the emotional and physical scars that often accompany this major surgical procedure.

As Debbie Sotirkys of Massachusetts testifies, women should have all the information they need to make the right choice in their abortion decision. I ask that her letter be printed in the RECORD.

The letter follows:

DEAR SENATOR HUMPHREY: My first abortion was illegal at the age of 18. That didn't stop the doctor from asking me if I wanted an abortion. That was all the counseling I received.

It is tragic that the counseling most women considering abortion receive is so near-sighted. Those who counsel women at abortion clinics are simply interested in rushing scared women and girls into abortions which many will regret later. It may take months, even years, but once the realization of what abortion is and does set in, women suffer devastating emotional crises and find it very hard to forgive themselves for the role which they had in killing their own children.

The tragedy of killing an unborn child by abortion is compounded by the physical harm done by abortion to many women who undergo the procedure. I myself suffered from a very bad infection after my abortion, an infection which spread throughout my body. Other women I know have been forced to have total hysterectomies or were simply rendered barren as the result of extensive scarring—all because of an abortion to which they never gave informed consent. Abortion is a very dangerous procedure for the mother of the child, both physically and psychologically.

I, along with many others, became hateful, angry, bitter, and resentful after the abortion. I dwelled on the baby's due date for years. My next abortion a year later was legal and the counseling wasn't any better. I wanted to make up for the first baby I killed. In turn I killed this one also. It saddens me to see how tough and "pro-choice" I became after the second abortion. The first one devastated me and, in order to handle my feelings, I had to become hard and put up a wall. I didn't know how to deal with murder.

Can you imagine how it feels years later to see pictures of aborted babies? I thought I would die, seeing what I'd done! I am 100% pro-life now. Women should be told all the facts about abortion. "What you don't know can hurt you!" It kills babies physically and women spiritually.

We, the women who have had abortions, know the physical and emotional pain left in abortion's wake. It has been our struggle to deal with abortion's aftermath, now it is our struggle to tell others the truth about abortion. Please help us in this effort.

Sincerely,

DEBBIE SOTIRKYS,
Massachusetts.●

CONGRATULATING THOMAS F. BUTLER UPON HIS RETIREMENT FROM THE NATIONAL FOREST PRODUCTS ASSOCIATION

● Mr. McCLURE. Mr. President, on December 31, 1987, Tom Butler will be retiring from his position as director of legislative research for the National Forest Products Association.

Tom's career with the NFPA began back in October of 1951 and for a significant part of the intervening years, his job has been to track the activities of the Congress on a day-to-day basis. Anyone able to do that remarkable job for 36 years and still maintain his sanity is deserving of special recognition.

Although his performance deserves to be rewarded, Tom recognizes the problems we face in trying to balance the Federal budget. As a result, he has agreed to forgo any such reward this body might have wished to bestow on him for putting up with us for the last four decades with the request that whatever sum might have been considered be, instead, used to reduce the deficit.

I know that my colleagues join with me in offering congratulations to Tom Butler for a job well done and hope that he will accept our congratulations on his retirement.●

FRAUD OF THE DAY—PART 20

● Mr. HEINZ. Mr. President, the world of fashion is not one which is normally linked with crime. Not long ago, however, some enterprising Taiwanese found a way to turn the transient fashion of today, with its unisex hairstyles and genderless clothes, into illegal import profits. Once again, it was apparel industry which was victimized by customs fraud, demonstrating that customs fraud does not touch all sectors of our economy equally. It

is concentrated in import sensitive areas that are subject to some special treatment under U.S. law—such as an import restraint program like textiles and apparel or steel, section 201 relief like the footwear industry had in the late 1970's, antidumping or countervailing duties to offset unfair trade practices, section 232 national security import relief like the machine tool industry is currently receiving, or high tariffs. These are sectors under extra pressure from imports, and it is clear our customs laws are not providing an adequate deterrent in these cases.

In late 1982, Private Collection, a Taiwanese apparel company, attempted to import a shipment of ladies' shorts to the United States. The Customs Service Import Specialist in Seattle decided that the category number on the shipment's customs invoice denoted a category that included, among other things, boys' swim trunks, and was not the proper one for the shipment. We do not know if the company's use of this category number was intentional or mistaken; we do know that this rejection made Private Collection decide to engage in fraud.

It changed its invoices to state that the shipments held boys' swim trunks instead of ladies' shorts, thus misidentifying the contents of the shipment to conform to the category number on the original invoice. In this way, the company hoped to enter the once rejected goods, as well as three further shipments. I would also assume, Mr. President, that quota limits on ladies' shorts were not unrelated to this episode.

Fortunately, the import specialist was not taken in by the seemingly unisex style, and he seized the shipments. Four shipments were seized worth about $262,000. The case was referred for criminal prosecution, but the U.S. Attorney, although the case was airtight, apparently thought that it would be too technical for a jury to understand. In the subsequent civil case, the company was found guilty of breaking 19 U.S.C. 1592, the customs fraud statute. The penalty was mitigated by 50 percent, and Private Collection ended up paying $72,500.

Mr. President, it is clear that this company decided that customs fraud was a viable, cost-effective, low-risk solution to its problem. In this one case it did not pay off. But in how many cases does it pay off? The Customs Service is understaffed, overworked, and underbudgeted. Even when customs violators are apprehended, the chances of prosecution and punishment are slim. The Justice Department prefers to expend its resources elsewhere, and judges have been reluctant to utilize the full scale of penalties available in criminal cases. Customs generally mitigates civil penalties as well, in part to avoid the cost and drain on staff time of lengthy legal proceedings.

Unfortunately, those are conditions that are not going to change in the near term. This administration has proposed cuts in the Customs Service budget every year it has been in office. Congress has generally ignored those proposals, but the modest increases voted have not kept pace with the Service's expanded needs. Much of the increases have also gone toward an expanded drug interdiction program, also an important national priority. In addition, the budget situation makes additional funding for enforcement extremely unlikely. That is why it is imperative that we adopt a private right of action in cases of customs fraud. In this way, private resources would be brought to bear to aid in the discovery and prosecution of customs violations. I urge Senators to join me in seeing that this provision becomes law.●

ENVIRONMENTAL PROTECTION

● Mr. MITCHELL. Mr. President, last week, former Senator Edmund Muskie was honored by the Environmental Law Institute for his hard work in enacting this country's modern environmental statutes. His wisdom on environmental matters remains timely and provides a needed reminder of how far we have come in environmental protection, but also how much further we need to go before we have adequately protected the public health and the environment. I ask that Senator Muskie's comments before the Environmental Law Institute be printed in the RECORD.

The material follows:

REMARKS OF SENATOR EDMUND S. MUSKIE

I am most appreciative of your kind and generous assessment of my efforts to write environmental law; and I am honored that it is associated with the task of generating resources to support the outstanding work of the Environmental Law Institute.

Next year will mark the 25th year—a quarter of a century—since the establishment of the Senate Subcommittee on Air and Water Pollution. As its first chairman, I was given the welcome assignment of applying myself to a problem of which I had been aware since my boyhood, and to which I had applied myself as a State legislator and as Governor of Maine.

I grew up within a few hundred yards of the Androscoggin River—already far from fishable or swimable. I learned to smoke pine needles in a cave on the banks of the Androscoggin. Harness races were held on its frozen surface in the winter, and the ice was harvested for sale in the homes of the area in the summer. When I came to the Senate, it was described as one of the ten dirtiest rivers in America. Today it is one of the success stories of the Clean Water Act.

In the 1960's our effort was to learn as much as we could about the problems and the options for dealing with them. We undertook to arouse public awareness of the problems in order to generate political support for the policies and programs we were equipping ourselves to recommend.

Our legislative initiatives, from today's perspective, evolved slowly but picked up momentum as we developed confidence in our perceptions of what was required. It has been said that in the 1960's we asked for too little, and that in the 1970's we asked for too much.

Another assessment I read recently put it this way: "Environmental spokespersons asked for more than was needed with little scientific support, while industry, facing tough competition, offered less than was necessary." The truth is that we have not done enough.

As we began our work in 1963, we inherited a virtually undeveloped regulatory scene. There was in place a rudimentary waste treatment program authorized at $50 million a year. Enforcement in the water pollution area took the form of enforcement conferences which were effectively a negotiated risk assessment and cooperation instrument—far too limited in its scope and resources. Air pollution was widely perceived as strictly a Los Angeles smog problem.

Our concerns for the environment did not touch toxics, hazardous wastes, acid rain, the greenhouse effect, the vulnerability of the ozone layer. Nor did we focus on the deteriorating quality of the Nations' ground water which furnishes the drinking water for one out of two Americans.

Desertification, deforestation, resource exhaustion, species extinction, climatic changes were not a part of our environmental agenda. And so we began work on our limited environmental agenda.

As a chairman emeritus, I am entitled to invent history, engage in 20-20 hindsight and second guess my successors. I can even put current events into their historical context without great fear of contradiction.

When Senator Cale Boggs of Delaware and I and a few other not very visible Members of Congress began the environmental initiative 25 years ago, we encountered resistance from virtually every quarter:

The administration opposed our legislative proposals—the Johnson administration.

The Chamber of Commerce opposed our legislative proposals—the staff person in charge was Jim Watt.

State and local governments opposed our legislative proposals—they would cost too much.

Only a few—garden clubs, the League of Women Voters, the National Wildlife Federation—were there to support federal involvement in pollution control.

To many, effective environmental investment was antagonistic to economic activity. Only a few shared the opposite view. Fortunately, I was one of them. And the people of Maine apparently shared my view that a quality environment was an important attraction to economic growth.

My colleagues on the subcommittee and I agreed that a policy which pitted local regulators against national industries, that posed a choice between jobs and environmental improvement, was doomed to failure.

With this common view, we set some rudimentary goals. First, we enacted a policy that said the existing quality of our air and water resources ought not be allowed to deteriorate. We knew we had a lot of cleanup to do. We didn't want to have to do the job twice.

Second, we had to establish the legal basis for insinuating the federal government into the environmental process.

What business, we were asked, did Uncle Sam have in the regulation of air and water quality, which historically and appropriate-

ly was the responsibility of state and local government?

What business, we were asked, did the federal government have requiring the air to be clean or the water to be safe?

For air pollution we fixed on protection of public health; our jurisdiction over water quality was asserted from a definition of "navigability" which we wrote.

With few experts and fewer organized constituents those definitions came slowly. The political battles were real even if not front page news. And we compromised—to avoid defeat.

To satisfy our detractors, build coalitions, and assure that responsibility for basic environmental decisions would continue to be made at the state and local level, we passed laws that required the establishment of air water quality standards on an air shed and river basin basis.

We demanded and funded public participation and public hearings on regional environmental standards. The success of the regional process was remarkable. Throughout the country the public demanded margins of air and water quality safety far stricter than industry thought reasonable. And those who saw local control as a license to pollute quickly changed their tune.

It was in the area of air quality where this shift was most intriguing. Within months after those first regional air quality standards were adopted the Nixon Administration proposed legislation establishing national air quality standards. And the business community which had resisted federalization of environmental standards supported that initiative. National air quality standards were mandated by the 1970 Clean Air Act.

Now, nearly a quarter of a century into the fight to achieve air quality standards adequate to protect public health, the Washington Post editorializes for "differential" air quality standards. In the future, according to the Post, the quality of the air we breathe should depend on where we live, not on those national public health related air quality standards.

Unlike the 1967 Act, which permitted minimum levels of air quality protective of public health and cleaner air if deemed locally desirable, the Post's proposed policy would set maximum levels of clean air with dirtier air where the task of cleanup has been difficult.

And without saying so, a new EPA policy released late last month accomplishes the same objective by simply declaring that the 1970 Clean Air Act deadlines are illusory and sanctions won't be applied, thus guaranteeing "differential" air quality.

Public health protection is the critical ingredient of federal air pollution regulation. Without this fundamental purpose, the justification for rigorous federal involvement in air pollution control is diminished. The basic thrust of the Clean Air Act is diverted. And I submit that, without public health standards that establish a scientific basis for pollution controls, the credibility of the national environmental cleanup effort will be irreversibly impaired.

After all, it seems to me, the entire toxics revolution is premised on a person's right to expect that the air we breathe, the water we drink, the land we cultivate is free of poison. The toxics revolution is no more than an extension of the battle we began 25 years ago with known, common pollutants.

Moreover, a body of law based on health protection has evolved. These laws, unlike any other public policy, continue to enjoy overwhelming and increasing political support. More people are willing to pay more money today to achieve the protection these laws require than at any other time in my memory. And that must tell us something. It tells me that we have a credible basis for public support. And it tells me political leaders better deliver the goods.

Even a cynic has to be nonplussed by the depth and breadth of support for tough pollution control laws. Moreover, that support actually seems to grow as political will appears to wane.

I remember the early Lou Harris polls in the Earth Day era that showed generalized support for clean air and water in the 70 percent to 80 percent category. It moved into the 80 to 90 percent area in response to Reagan, Gorsuch and Watt. In the 70's, when the public was tested directly on the trade-off between jobs and the environment or on investing in more pollution control, the public was more evenly divided.

For example, in 1977, the year the Clean Air Act was last amended, the Eagleton Institute asked the people of New Jersey, our most urbanized state, to choose between maintaining strict anti-pollution laws or relaxing those laws to create more jobs. The New Jersey public was divided 46 to 46 percent.

In August of this year, the people of New Jersey responded to the same question by a resounding 69 to 19 percent in favor of strict laws!

Similar opinion samples for states from Texas to Maine and nationally indicate similar levels of public commitment. So why, in the face of this support, do Presidents and their men fail to aggressively pursue the initiatives Congress has taken? Why are compromises with health standards, timetables and emission controls the rule rather than the exception?

One would think that if politicians on the firing line don't compromise on tough questions, unelected regulators—and editorial writers for that matter—wouldn't either.

For reasons inexplicable, EPA administrators seem determined to substitute their judgment for that of an elected Congress—to save those "misguided" politicians from their own constituents.

The draft preamble to EPA's newest deadline avoidance policy is filled with arguments justifying its policy choices as merely filling in "gaps" in the Clean Air Act.

It also contains this passage: "On its face . . . the 1977 Clean Air Act . . . requires EPA also to restrict Federal grants to a State's air pollution control program if the State is not implementing its plan." Despite this requirement, EPA proposes to use the cutoff only "as a last resort." Why? "The EPA believes that Congress would not have intended the cutoff to apply automatically" in the current circumstances.

Maybe. Maybe not. But it is this attitude, that Congress could not have intended what it so clearly said, that has thrown our national clean air program into neutral.

Clean air advocates are saying we need a new Clean Air Act that will outfox the regulators and revitalize the program. The fact is, the old law suffers mainly from a lack of regulatory courage.

What this EPA has done with deadlines isn't new. Congress anticipated bureaucratic interference with the 1970 Clean Air Act and incorporated public access to the courts in that law and virtually every other environmental statute since enacted.

Congress even anticipated the judicial disinclination to interfere with administrative discretion.

Today there are dozens of citizen suits pending at all levels of the judiciary. Some have been brought by just plain folks, others by prestigious environmental groups like the Natural Resources Defense Council and the Environmental Defense Fund.

Through all this, the basic laws have survived. The policy has moved ahead, albeit too often at an excruciating pace. The air is cleaner. The public is better educated. A body of law cloaked in Circuit and Supreme Court interpretation has evolved.

And people are still participating in the process. Because it is they, not we, who started it all 25 years ago. Pollution is still a local problem; environment is still a local political issue.

It is this point that seems to miss the regulators. Environment is fundamentally a political question that requires voters to sort out their priorities. People who are elected to office understand this. Regulators are insulated from this reality.

Regulators are not insulated from the demands of their boss. If the people demand a more responsive Environmental Protection Agency, and hold the politicians accountable, the agency can and will respond.

We are already seeing signs of a new militancy among local voters on the environment. Local elections from Los Angeles to Long Island to Fairfax County have turned on quality of life questions. Statewide races from Washington to Florida to New Jersey have focused on environmental issues.

Nationally, the politicians have been better able to get by with generalized commitments and vague promises to "stop acid rain" or "clean up toxic dump sites." Not even Ronald Reagan and Jim Watt publicly favor a dirty environment.

So, as was the case in the year of Earth Day, it's again time to ask the candidates to focus on the specifics. Acid rain, nonattainment and toxic air pollution are tough problems. They are as good a test as any of the potential for leadership. Let's hear more about specific plans. Let's make sure the same message is being delivered in New Hampshire and Illinois, in Minnesota and in Texas. Let's see how each candidate measures up.

I ran for President once, and I am reminded of the advice I received from a voter on the Eastern Shore of Maryland. "Nobody expects a politician to keep all his promises," he said. "But by God, they ought to promise."

Ultimately, it's a matter of raising expectations:

Expectations on the part of candidates and elected officials that they will be called to account.

Expectations on the part of regulators that their job is protecting the public interest and their job is on the line.

Expectations on the part of regulated industry that it will be better in a long run to find ways of cleaning up than to find ways of avoiding it.

In a recent essay, Gus Speth recalled a French riddle used to teach students about the concept of exponential growth: A lily pond, so the riddle goes, contains a single leaf. Each day the number of leaves doubles—two leaves the second day, four the third, eight the fourth and so on. "If the pond is full on the 30th day," the question goes, "at what point is it half full?" Answer: "On the 29th day."●

AMENDING TITLE II OF THE SOCIAL SECURITY ACT TO CONTINUE DISABILITY BENEFITS DURING AN APPEAL

Mr. BYRD. Mr. President, I ask unanimous consent to introduce and have the Senate proceed thereon, a bill on behalf of Senators BENTSEN, DOLE, MOYNIHAN, and other Senators, dealing with the continuation of Social Security disability benefits during appeal.

The PRESIDING OFFICER. The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (S. 1937) to amend Title II of the Social Security Act to continue disability benefits during an appeal.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. BYRD. Mr. President, I support this legislation, which will extend the provisions to allow beneficiaries of disability benefits to elect to continue to receive disability payments and Medicare coverage pending an appeal to an administrative law judge on an adverse continuing disability review decision.

No one advocates paying benefits to those that are no longer disabled; however, mistakes can and have been made in terminating disability benefits. I remember well, the havoc wreaked on the lives of individuals and their families when disability benefits were abruptly terminated. The sad fact of the matter is that many of those individuals were still disabled. Their benefits were reinstated upon appeal of the adverse continuing disability review decision. Unfortunately, in the interim period, thousands of the disabled were left without any medical coverage or any means of support. We must not let this happen again.

I support this measure, and I urge my colleagues to do likewise.

Mr. BENTSEN. Mr. President, the bill I am introducing today is of considerable urgency. Unless we enact legislation this year, disabled Social Security beneficiaries who have been notified of a medical termination decision will no longer be able to receive benefits pending the outcome of an appeal. The provision in the law that authorizes payment of benefits pending appeal expires December 31.

Legislation authorizing disabled Social Security beneficiaries to elect to have disability benefits and Medicare coverage continued pending a decision by an administrative law judge [ALJ] was first enacted in 1983.

You will recall that at that time the Congress was greatly concerned about serious inadequacies in the disability determination process. Of particular concern was the lack of uniformity of decisions between the State disability determination agencies and the ALJ's.

In the early stages of the disability periodic review process, which was initiated by the Disability Amendments of 1980, about 50 percent of those reviewed were found ineligible for benefits by State agencies. Of those who appealed, about 60 percent had their benefits reinstated at the ALJ level.

This discrepancy raised serious questions about the fairness and accuracy of the decisionmaking process. The provision authorizing payment of benefits during appeal was enacted as a temporary measure, pending substantive legislation dealing with the fundamental problems in the disability determination and appeals process.

In the Social Security Disability Benefits Reform Act of 1984, the Congress approved a number of amendments aimed at reforming the process, and providing greater accuracy and uniformity of decisionmaking. At the same time, it extended the authority to continue payments during appeal, but limited the extension to only 4 years, in the expectation that improvements in the program's administration would make a permanent position unnecessary.

However, implementation of the 1984 reform amendments by the Social Security Administration has been slower than expected, and only recently has SSA begun to review significant numbers of cases under new regulations and guidelines. It is not yet clear whether large numbers of cases will be terminated under this review process, and, if so, what the ultimate outcome will be after some of these decisions are appealed.

Because of this uncertainty, I believe it is essential to continue the authority for another year.

This bill will ensure that persons who are disabled and unable to work will have their benefits continued while they pursue their appeal before an administrative law judge. They will also continue to be eligible for Medicare. However, if the initial termination decision is upheld, the cash benefits that have been paid are subject to recovery. Thus, the needs of the disabled are fully recognized, and the Social Security Disability Trust Fund is protected.

Mr. President, all of us in the Congress are concerned that the Social Security System be perceived as fair by both beneficiaries and the public at large. We need this provision for another year, to give us time to assess whether the process is working as the Congress intended. Enactment of this bill is in everyone's interest, and I urge my colleagues to support it.

Mr. MOYNIHAN. Mr. President, I would like to express the great appreciation of the Chamber to the distinguished majority leader and the acting Republican leader for their expeditious approach to this important and necessary bit of legislation. It has to do with a very simple proposition. Under present law, which expires December 31, persons who are receiving disability insurance under the Social Security System, OASDI, and who have been determined, through a "Continuing Disability Review," no longer to be eligible, and who have appealed this determination to an administrative law judge, under present law their entitlement to disability benefits continues until the decision by the administrative law judge is handed down.

In the past, particularly 1982, we had an extraordinarily unhappy experience. The administration speeded up these disability reviews and an enormous number of persons were declared ineligible. Many of these people were seriously disabled and in need of medical care. Many did not have resources, did not have earnings—that is why they were all on disability in the first place—and suddenly they were deprived of their disability insurance income. Many of those terminated appealed these adverse decisions and, in an extraordinary proportion of cases, the administrative law judges found they had been eligible all along; the initial decisions had been wrong. Indeed, the performance of the system was lamentable. In the half-century history of social insurance, Social Security, we had no such thing. And yet, in this interim period, disabled workers and their dependents suffered.

We have, in this matter, complete unanimity. The distinguished chairman of the Committee on Finance is the sponsor of this legislation. I am his cosponsor, as chairman of the Subcommittee on Social Security and Family Policy. I believe this measure has support on both sides of the aisle. I can speak to the fact that Dr. Bowen, the Secretary of Health and Human Services, has written to Members of the Senate asking us to proceed in a timely manner and, indeed, we have very little time. The less time I use in speaking to the matter, the more expeditiously it might be dealt with.

To reiterate, Mr. President, under a provision of current law that expires December 31, 1987, a disability insurance [DI] beneficiary who has been determined to be no longer disabled during a continuing disability review [CDR] may elect to continue to receive DI benefits while appealing the decision to an administrative law judge [ALJ].

If the beneficiary's appeal is successful, he will have experienced no disruption in his benefits.

If the beneficiary's appeal is unsuccessful, then the law provides that he must repay the benefits he received in the interim.

If Congress fails to extend this expiring provision, thousands of individ-

uals will lose their DI benefits while they appeal adverse CDR decisions.

It is worth noting that the House has already acted to extend this provision in its reconciliation bill. But for the prohibition on including Social Security legislation on budget bills, the Finance Committee would have included an extension of this provision in its reconciliation package.

Since the Senate's reconciliation bill is not a viable legislative vehicle, and the December 31 expiration date looms around the corner, we must move this emergency measure.

It is also worth noting, Mr. President, that the administration supports extending this provision. HHS Secretary Otis Bowen informed congressional leaders of the impending expiration of this provision in a letter delivered on December 3.

I commend the Secretary for his handling of this situation, so in contrast to the recent administration response to the expiration of a provision permitting welfare recipients to receive—in-kind—charitable donations without having their public assistance benefits reduced.

In that instance, the administration astonished and angered congressional Democrats and Republicans by instructing Social Security field offices to begin reducing welfare payments for charitable contributions even as the Congress moved to make the disregard of such charity permanent!

Given the administration's disregard for congressional intent, I was compelled to introduce an emergency bill, S. 1793, on October 16, 1987, protecting welfare recipients from these benefit reductions. I am pleased to say that this measure was passed unanimously by the Senate a few days later. A similar provision is included in the House reconciliation bill.

PROTECTING DI BENEFICIARIES

At present, Mr. President, there are about 4 million DI beneficiaries; 2.7 million of whom are disabled workers and 1.3 million of whom are dependent spouses and children.

According to SSA's Office of the Actuary Projections for 1988, about 216,000 disabled workers—or 8 percent of the disabled workers of DI—will be subject to "continuing disability reviews" [CDR's].

Of these annual reviews, about 51,000—or a quarter of those reviewed—will be notified that they are no longer disabled and that their DI benefits will be terminated.

Of these 51,000 disabled workers, the SSA actuary estimates that 43 percent—22,000—will appeal and eventually win their cases. These SSA estimates could be underestimated: In fiscal year 1986, ALJ's reversed 52 percent of DI case-terminations on appeal; in fiscal year 1985, 55 percent were reversed.

Another 35 percent—18,000—will appeal and lose their cases, 20 percent—10,000—won't appeal their cases at all, and about 2 percent—1,000—will appeal but elect not to receive interim DI benefit payments.

In short, Mr. President, a failure to extend this provision would mean that, next year, some 22,000 disabled workers—and roughly 44,000 of their dependents—will be denied interim DI benefits, even though they will eventually win their administrative appeals.

THE NATURE OF THE HARDSHIP IMPOSED

Mr. President, the average length of time that a DI beneficiary waits for an administrative decision from an ALJ is over 8 months. If beneficiaries initiate an administrative appeal, they may receive interim benefits for the first 2 months after the month in which the adverse CDR decision is made, even if this expiring provision is not extended.

The average monthly benefit paid to a disabled worker on DI is $488; to his or her spouse, $130; and to a dependent child, $140. These are December 1987 figures.

Thus, Mr. President, take for example the case of the average disabled husband, dependent wife, and children. Such a family would receive, on average, a DI benefit of $919 per month. During the appeal, unless we extend this expiring provision, this average DI family could lose over $4,500 in benefits.

LEGISLATIVE BACKGROUND

Mr. President, it is the responsibility of the Congress and the Social Security Administration to ensure that only those who are genuinely disabled receive DI benefits.

Toward this end, I supported the adoption of the Disability Insurance Amendments of 1980, requiring SSA to reexamine every individual determined to be temporarily disabled at least once every three years. These reviews are in addition to the administrative procedures previously used.

Unfortunately, Mr. President, the administration did not administer these disability reviews in a fair and judicious manner. In March 1981, the administration accelerated the disability reviews. Numerous individuals, far more than was usual, were notified that they were losing their DI benefits. Requests for appeals piled up and class action suits were filed.

As a consequence, late in 1982, Congress first provided for temporary, interim disability payments, pending the outcome of administrative appeals, Public Law 97-455, enacted in January 1983. And we acted in the nick of time: Between 1981 and 1984, SSA reviewed nearly 1 million DI beneficiaries and nearly half of them had their benefits terminated. But in subsequent appeals, ALJ's reversed over 60 percent of those terminations.

At the time, a Federal judge in Minnesota described the administration's procedures as "arbitrary, capricious, irrational, and an abuse of discretion." Governors from 10 States, including New York, refused to administer the disability reviews as instructed by SSA. In the wake of this fiasco, in April 1984, the Secretary of HHS—Margaret Heckler—suspended all further disability reviews.

This deeply troubling administrative arrogance led the Congress, in 1984, to adopt the Social Security Disability Benefits Reform Act of 1984. That legislation incorporated a number of provisions to rectify the disability review process that I had introduced, as S. 2002, in October 1983.

Among other things, the 1984 amendments extended for the second time, the provision permitting DI beneficiaries to elect to receive benefits while appealing adverse CDR decisions.

The 1984 legislation also required the Secretary of HHS to study the effects of the continued payment of interim DI benefits during appeals. That study and the Secretary's recommendations were expected last summer, but the study was delayed by the moratorium on disability reviews imposed by the Secretary in 1984.

The HHS report is now due to be completed in the summer of 1988. Congressional leaders and the administration agree that, until this report is submitted and while we consider any new recommendations, we must continue to pay interim DI benefits during administrative appeals.

SUPPORT THIS EMERGENCY MEASURE

Mr. President, as chairman of the Social Security Subcommittee in the Finance Committee, I can assure my colleagues that when the Secretary's findings and recommendations reach us, they will be carefully reviewed.

At that time, we will decide whether or not to further extend this interim disability provision or to establish more far-reaching disability review standards.

In the meantime, Mr. President, the provision we consider today protects disabled workers and their families from premature terminations of their DI benefits.

It never has been our intent, nor can it be our intent now, to permit such families to suffer economic hardship. Therefore, I urge my colleagues to support this emergency extension of the provision permitting interim payment of DI benefits during an administrative appeal.

Mr. RIEGLE. Mr. President, I rise to commend my colleague, Senator BENTSEN, for his leadership in introducing S. 1937, a bill which extends for 1 year the continued payment of disability benefits while a person appeals to the administrative law judge [ALJ] level. I

am pleased to join with him as an original cosponsor of this bill, which would continue the provision of a crucial protection for disability claimants.

Such a protection was originally enacted on a temporary basis in 1982, and was extended in the 1984 Disability Reform Act amendments. The provision expires on December 31, 1987. Senator BENTSEN's bill extends for 1 year the continued payment of disability benefits during appeal.

The original purpose for enacting this provision still exists: there are long delays in obtaining appeal hearings and decisions. When decisions are finally reached, about half of the individuals who appeal to the ALJ stage obtain reversals of the termination decision. It would be grossly unfair to once again expect individuals who the Social Security Administration [SSA] once found to be disabled to somehow survive without their Social Security and Medicare benefits while their cases are being adjudicated at the ALJ level.

In fact, in 1981 and 1982, many beneficiaries who were cut off from disability payments underwent severe hardship. The stress from the loss of income and health care exacerbated the condition of some of these disabled individuals. Some lost their homes, were unable to purchase food or pay their utility bills, and some even became more seriously disabled. We must not let this happen again.

In 1984, when the 3 year expiration date was included in the Disability Act, it was believed that this would provide SSA with sufficient time to accomplish continuing disability reviews on those intended to be protected by the act. In fact, SSA has barely made a dent in reviewing the average case under the new review procedures.

Late in 1986, the GAO urged SSA to shift its focus away from cases where it does not except the person to improve to cases where it does expect improvement. GAO's concern about SSA failure to review the latter group is so great that it has not pressed SSA on the issue of review of the average case, where improvement is only possible.

As a result, very few of the individuals Congress was most concerned about have benefited from this provision. Their cases will not come up for review until next year or later. In addition, due to the limited use of the provision, SSA has not yet submitted to Congress the results of the study on the effects of the provision which Congress instructed it to undertake in the 1984 act.

Mr. President, I would once again like to commend the leadership of the distinguished chairman of the Senate Finance Committee, Senator BENTSEN, whose commitment to the needs of the disabled is demonstrated in his introduction of S. 1937. I urge all of my colleagues to support this urgently needed legislation.

Mr. COHEN. Mr. President, in the absence of congressional action, the provision of Federal law that permits beneficiaries to continue to receive disability benefits while their cases are under review will lapse on December 31, 1987. Earlier this month, the Secretary of Health and Human Services, Dr. Otis R. Bowen, notified the Congress that, if this expiring provision is not extended by December 31, he will have no recourse but to eliminate interim disability benefits payments. This threatens thousands of disabled Americans who are facing challenges to their entitlement to Social Security disability benefits.

I am pleased to join my colleagues, Senator DOLE, Senator BENTSEN, and others who have put so much effort into making the Social Security Disability Program both efficient and fair, as a cosponsor of legislation to extend for another year this key aspect of the Social Security Disability Benefits Reform Act.

During recent Congresses, the adminstration of the Social Security Disability Program has given rise to storms of criticism and controversy. In 1980, Congress mandated periodic reviews of disability beneficiaries. What took place immediately after the passage of this original reform measure was an effort by the administration to implement a congressional mandate. The administration took to this effort with a fervor that was not matched with capability. The Social Security Administration [SSA] called for the review of cases before staffing was adequate. The SSA called for reviews of cases by inadequately trained staff. The agency reviewed cases without extending adequate notice to beneficiaries—without indicating that the beneficiaries whose cases were under review would have to present fresh medical evidence of disability and carry the burden of proof. And so, thousands upon thousands of beneficiaries were stricken from the disability rolls never having been fully apprised of the nature or the consequences of the disability review procedure itself. It was done in a way that hardly reflected well on the compassionateness of our Government.

One of the very troubling aspects of this procedure was hardship borne by beneficiaries during the appeal of termination decisions. Those individuals who were terminated from the disability rolls bore the burden of appealing the termination decision. The appeals process would take anywhere from 1 year to 18 months, during which time individuals had no source of relief or compensation. Pending their appeals, many caught up in this red tape lost their homes, sold their cars, and suffered tremendous physical and psychological burdens only to have an administrative law judge find that the termination had been in error.

During the 3 years which followed the start of disability reviews in March 1981, State agencies, which apply Social Security Administration guidelines, disqualified some 500,000 beneficiaries. Yet more than 200,000 of these individuals were reinstated after appealing to administrative law judges who ruled that they, in fact, remained disabled and thus were entitled to benefits. Thousands of others were restored to the program by court orders.

The hardships imposed on the truly disabled have been well chronicled by numerous hearings, studies, court decisions, press reports, and personal experiences. These reviews spawned an overwhelming number of court challenges, an unprecedented rebellion by State governments, and pleas for justice from the disabled, their families, and their advocates.

In 1983, I authored, along with Senator LEVIN, the Social Security Disability Benefits Reform Act. This legislation, which eventually became law, established criteria for assessing the continued eligibility of individuals receiving disability benefits. The Social Security Disability Benefits Reform Act also extended the law allowing benefits to be continued pending appeal. I am delighted that the Senate is acting today to preserve the protection that this provision of law has afforded Social Security disability beneficiaries. We need to keep this law on the books to maintain the progress of the past few years in reforming the Social Security Disability Program such that it is both frugal and fair.

The PRESIDING OFFICER (Mr. BINGAMAN). The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 1937) was ordered to be engrossed for a third reading, was read the third time, and passed as follows:

S. 1937

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONTINUATION OF DISABILITY BENEFITS DURING APPEAL.

(a) IN GENERAL.—Subsection (g) of section 223 of the Social Security Act is amended—

(1) in the matter following subparagraph (C) of paragraph (1), by striking "(iii) June 1988" and inserting in lieu thereof "(iii) June 1989"; and

(2) in paragraph (3)(B), by striking "January 1, 1988" and inserting in lieu thereof "January 1, 1989".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on the date of enactment of this Act.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote by which the bill is passed.

Mr. DOMENICI. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. Mr. President, I thank the majority leader on behalf of hundreds of thousands of persons who would have been unjustly and unnecessarily injured and harmed were he not able to bring this matter to the floor as he has done, and as he always does when such matters are at issue.

Mr. BYRD. Mr. President, the distinguished Senator is not only welcome but he is to be thanked on the part of all those same persons for his perspicacity and his forthrightness and effective action.

Mr. MOYNIHAN. I thank the distinguished majority leader.

Mr. DOMENICI. Mr. President, I ask my friend from New York if he will accommodate me by seeking consent that I be made a cosponsor to this legislation.

Mr. MOYNIHAN. Mr. President, I certainly do ask unanimous consent that the distinguished Senator from New Mexico [Mr. DOMENICI] be added as an original cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The majority leader is recognized.

Mr. BYRD. Mr. President, I ask unanimous consent that my name be added as a cosponsor of the legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I again thank the distinguished Senator from New York [Mr. MOYNIHAN] for his leadership.

ADJUSTMENT TO CERTAIN OIL AND GAS ROYALTY PAYMENTS

Mr. BYRD. Mr. President, I ask the distinguished acting Republican leader if Calendar Order 461 has been cleared on his side on the aisle.

Mr. DOMENICI. Yes, it has been, I say to the distinguished majority leader.

Mr. BYRD. I thank my friend.

Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order 461.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3479) to provide for adjustments of royalty payments under certain Federal onshore and Indian oil and gas leases, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be referred to as the "NTL-5 Gas Royalty Act of 1987".

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior or his designee.

(2) NT5-5.—The term "NTL-5" means the Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases published May 4, 1977 (42 Fed. Reg. 22610).

(3) OTHER TERMS.—All other terms carry the same meanings as provided in section 3 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1702).

SEC. 3. VALUATION FOR ROYALTY PURPOSES OF CERTAIN GAS PRODUCTION FROM FEDERAL AND INDIAN LANDS.

(a) APPLICABILITY.—The provisions of this section shall be used in determining the value for royalty purposes of any gas production form Federal onshore or Indian oil and gas leases during the period from January 1, 1982, through July 31, 1986, which is within the coverage of section I.A.2 or section II.A.2 of NTL-5, and for which the lessee or royalty payor provides written documentation, determined to be adequate by the Secretary and existing at or near the time the gas was sold, of receipt of less than the highest applicable price under the Natural Gas Policy Act.

(b) ROYALTY CALCULATION FOR CERTAIN FEDERAL ONSHORE OIL AND GAS LEASES.—If the gas referred to in subsection (a) of this section was produced from a Federal onshore lease, the value shall be determined in accordance with the lease terms and the regulations codified at part 206 of title 30 of the Code of Federal Regulations as in effect at the time of production.

(c) ROYALTY CALCULATION FOR CERTAIN INDIAN LEASES.—If the gas referred to in subsection (a) of this section was produced from an Indian lease, the value shall be determined in accordance with the lease terms and the regulations codified at part 206 of title 30 of the Code of Federal Regulations and sections 211.13 and 212.16 of title 25 of the Code of Federal Regulations, as applicable and as in effect at the time of production.

(d) WRITTEN DOCUMENTATION.—The written documentation required under subsection (a) of this section may include, but is not limited to, a gas sales contract, purchase statement, receipt, or other written documentation deemed appropriate by the Secretary existing at or near the time of sale showing the actual price received.

(e) EXCEPTION.—This section shall not apply to any gas for which, in the Secretary's judgment, the lessee or royalty payor received less than the highest applicable price under the Natural Gas Policy Act due to a failure by the lessee or payor to collect amounts which the purchaser would have been required to pay under a gas sales contract providing for that price and not as a result of market conditions or considerations.

SEC. 4. REFUND OF ROYALTIES PREVIOUSLY PAID.

(a) REFUND FOR FEDERAL ONSHORE OIL AND GAS LEASES.—If the Secretary or a court of competent jurisdiction determines that a lessee or royalty payor on a Federal onshore oil and gas lease has paid, prior to October 1, 1987, more than the value determined under subsection 3(b) of this Act for any natural gas within the coverage of subsection 3(a) of this Act, the Secretary shall refund the amount paid in excess of the value determined under subsection 3(b) from monies received under section 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 191), which would otherwise be deposited to miscellaneous receipts in the Treasury. The Secretary shall not recoup any portion of such refund from any State.

(b) REFUND FOR INDIAN LEASES.—If the Secretary or a court of competent jurisdiction determines that a lessee or royalty payor has paid, prior to October 1, 1987, more than the value determined under subsection 3(c) of this Act for any gas within the coverage of subsection 3(a) of this Act and produced from an Indian lease, the Secretary shall refund the amount paid in excess of the value determined under subsection 3(c) from monies received under section 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 191) which would otherwise be deposited to miscellaneous receipts in the Treasury. The Secretary shall not recoup any portion of any such refund from the Indian lessor.

(c) The total amount of refunds made under this section shall not exceed $2,000,000.

SEC. 5. PROCEDURES.

(a) CASE-BY-CASE AUDIT FOR CERTAIN FEDERAL ONSHORE OIL AND GAS LEASES.—The Secretary shall publish in the Federal Register and send to each lessee or royalty payor of record as of July 31, 1986, for any Federal onshore oil and gas lease a notice of enactment of this Act informing such lessees and royalty payors of the provisions of this Act and the terms and conditions for receiving refunds or royalty calculations under this Act. Any lessee that has reason to believe that it is entitled to a refund under this Act shall provide written notice to the Secretary in a form prescribed by the Secretary specifying the Federal onshore oil and gas lease or leases involved. The Secretary, and any State in accordance with delegations of authority under section 205 or cooperative agreements under section 202 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1732, 1735), shall conduct a case-by-case audit of royalties for such leases and any other Federal onshore lease which the Secretary may select for examination under existing law to determine the amount of royalties due and payable under this Act and other applicable law and the amount of any refund due the lessee.

(b) CASE-BY-CASE AUDIT ON INDIAN LEASES.—The Secretary, and any tribe in accordance with cooperative agreements under section 202 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1732), shall conduct a case-by-case audit of royalties for Indian oil and gas leases on which gas was produced at any time during the period from January 1, 1982, through July 31, 1986, which is within the coverage of section I.A.2 or section II.A.2 of NTL-5 to determine the amount of royalties due and payable under this Act and other applicable law and the amount of any refund due the lessee.

(c) MMS NOTICE.—The Secretary shall provide a notice under this section to each lessee under a Federal onshore or Indian oil and gas lease on which an audit was performed in accordance with this section. The notice shall contain each of the following:

(1) A statement of the amount of the royalty payments made in accordance with the provisions of NTL-5.

(2) A statement of the amount of refund, if any, to which the lessee is entitled under this Act and a description of the means by which such refund will be provided.

(c) REPORT TO INDIAN TRIBES.—The Secretary shall provide a report to each Indian tribe holding an Indian oil and gas lease on

which gas was produced at any time during the period from January 1, 1982, through July 31, 1986, which is within the coverage of section I.A.2 or section II.A.2 of NTL-5. The report to each tribe shall contain information for each such lease held by the tribe stating the difference between royalties computed in accordance with NTL-5 and royalties computed in accordance with subsection 3(c) of this Act.

SEC. 6. RECORD KEEPING REQUIREMENTS.

Notwithstanding the requirements of section 103 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1713), and any regulations promulgated pursuant thereto, lessees and other payors are required to maintain records related to the value of gas production to which this Act applies for the period January 1, 1982, through July 31, 1986, until the Secretary gives notice that maintenance of such records no longer is required.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment.

If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass? So the bill, (H.R. 3479), as amended, was passed.

The title was amended so as to read "An Act to provide clarification regarding the royalty payments owed under certain Federal onshore and Indian oil and gas leases, and for other purposes".

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed and by which the title was amended en bloc.

Mr. DOMENICI. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SENATE JOINT RESOLUTION INDEFINITELY POSTPONED—SENATE JOINT RESOLUTION 217

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar Order 456, Senate Joint Resolution 217, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

FOR THE RELIEF OF SUSAN A. SAMPECK

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be discharged from further consideration of H.R. 3319, a bill for the relief of Susan A. Sampeck, and that the Senate proceed to its immediate consideration, that it be read the third time and passed, and that a motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRANSFER OF OBSOLETE SUBMARINE U.S.S. "TURBOT" TO DADE COUNTY, FL

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 388.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3283) to allow the obsolete submarine U.S.S. *Turbot* to be transferred to Dade County, FL, before the expiration of the otherwise applicable 60-day congressional review period.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

AMENDMENT NO. 1253

Mr. BYRD. Mr. President, I send to the desk an amendment by Mr. METZENBAUM and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. BYRD), for Mr. METZENBAUM, proposes an amendment numbered 1253.

Mr. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new section:

SEC. . Notwithstanding any other provision of law, any sale or other transfer to Saudi Arabia by the United States of F-15 aircraft shall be subject to the following conditions:

(1) Any such F-15 aircraft sold or otherwise transferred to Saudi Arabia shall be limited to models A, B, C, and D.

(2) The United States shall not sell or otherwise transfer to Saudi Arabia the F-15E or other advanced aircraft with a ground attack capability and shall not upgrade existing Saudi aircraft to that capability.

(3) Saudi Arabia shall not possess more than 60 F-15 aircraft at any time, except that additional replacement F-15 aircraft may be held in the United States, at the expense of Saudi Arabia, for shipment to Saudi Arabia only after the President notifies the Congress that the existing inventory of F-15 aircraft held by Saudi Arabia is less than 60 and, then, only on a one-for-one replacement basis as each F-15 aircraft is removed from the inventory of Saudi Arabia.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1253) was agreed to.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 3283), as amended, was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DOMENICI. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

APPOINTMENT OF CONFEREES ON TITLE XI OF H.R. 5

Mr. BYRD. Mr. President, I ask unanimous consent that Senators INOUYE, MELCHER, DECONCINI, BURDICK, DASCHLE, EVANS, MURKOWSKI, and MCCAIN be appointed conferees for purposes of the House-Senate conference on title XI, the Indian Education Amendments of 1987, of H.R. 5, an act to improve elementary and secondary education.

The PRESIDING OFFICER. Without objection, it is so ordered.

APPOINTMENT OF CONFEREES ON H.R. 2700

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate H.R. 2700.

The PRESIDING OFFICER. The Chair lays before the Senate H.R. 2700.

The legislative clerk read as follows:

A bill (H.R. 2700) making appropriations for energy and water development for the fiscal year ending September 30, 1988, and for other purposes.

Mr. JOHNSTON. Mr. President, I intend to ask unanimous consent shortly to have the Senate conferees appointed on H.R. 2700, the energy and water appropriations bill for 1988. First, I would like to take a moment to explain how I see the House and the Senate dealing with pending nuclear waste legislation. Major modifications to the Nuclear Waste Program have been included in both H.R. 2700 and in the budget reconciliation bill which will be before the Senate shortly. I would like to suggest the following

method of dealing with the nuclear waste issue:

First, Senate conferees would be appointed on H.R. 2700.

Second, we will attempt to deal with proposed changes in the high-level Nuclear Waste Program as a part of the budget reconciliation legislation which will be conferenced between the House and the Senate as part of the budget reconciliation conference report.

Third, the conferees on H.R. 2700 will defer to any agreement on nuclear issues passed as part of budget reconciliation and will not confer on these issues nor include such matters in such bill so long as efforts on reconciliation continue. If such matters are passed as part of reconciliation, they shall be excluded from appropriations measures, except for the dollar appropriation.

Fourth, if agreement between the House and the Senate on any proposed modifications to the Nuclear Waste Program cannot be reached on the budget reconciliation legislation, there would be an opportunity for a vote by the full House of Representatives on proposals to modify the Nuclear Waste Program as part of their consideration of appropriations measures in accordance with House rules.

Mr. REID. Mr. President, my primary concern with the way that the Senate has proceeded on H.R. 2700 is that the Senate chose to include a major new piece of authorizing legislation on nuclear waste as part of an appropriations bill, thus blocking the House authorizing committees with jurisdiction over nuclear waste from taking part in the formulation of this important legislation. That is why I have taken the steps that I have to delay consideration of H.R. 2700.

As I now understand the chairman's proposal, the appropriations conference on H.R. 2700 would not attempt to finalize an agreement on the nuclear waste provisions in the bill so long as efforts to agree on modifications to the 1982 Nuclear Waste Act are ongoing as part of the reconciliation legislation. Is that correct?

Mr. JOHNSTON. That is correct.

Mr. ADAMS. If the Senator from Louisiana will yield for a moment, I would like to associate myself with the remarks just made by the Senator from Nevada. During the Senate's debate on H.R. 2700, I made it clear that I had no objection to the prompt consideration of all of the portions of the bill with the exception of those provisions to amend the Nuclear Waste Policy Act. It was my intent, as it was the Senator's from Nevada, to assure that those critical changes to existing law were not legislated on the energy and water appropriations bill without the participation of all of the relevant authorizing committees. I welcome the comments of the Senator from Louisiana as an important step in resolving the impasse on this issue.

Mr. REID. Finally, if no agreement can be reached in the reconciliation conference on nuclear waste, any proposed modifications to the Nuclear Waste Program would be put to a vote by the full House as part of their consideration of appropriations measures.

Mr. JOHNSTON. That is correct.

Mr. REID. This proposal gets us back on track. We will be fully involving the House committee with jurisdiction over this issue. With this understanding, I have no objection to the appointment of conferees on H.R. 2700.

Mr. ADAMS. Mr. President, I too believe that this approach will help us get the nuclear waste issue into the process where the rights of all of our colleagues are preserved but where we can begin good faith negotiations between the House and Senate.

Mr. BYRD. Mr. President, I move that the Senate insist on its amendments to H.R. 2700 and request a conference with the House on the disagreeing votes between the two Houses and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. JOHNSTON, Mr. STENNIS, Mr. BYRD, Mr. HOLLINGS, Mr. BURDICK, Mr. SASSER, Mr. DECONCINI, Mr. HATFIELD, Mr. MCCLURE, Mr. GARN, Mr. COCHRAN, Mr. DOMENICI, and Mr. SPECTER conferees on the part of the Senate.

Mr. BYRD. Mr. President, I ask unanimous consent that my name be deleted from the list of conferees stated by the Chair on H.R. 2700. I just have my platter full, and I cannot.

The PRESIDING OFFICER. Without objection, it is so ordered.

BUDGET RECONCILIATION

Mr. CHILES. Mr. President, I send to the desk for the purpose of being printed an amendment proposed by Mr. BYRD, Mr. DOLE, Mr. CHILES, Mr. DOMENICI, Mr. BENTSEN, Mr. STENNIS, Mr. JOHNSTON, and Mr. HATFIELD and ask that the amendment be printed and lay over at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under Amendments Submitted.)

Mr. CHILES. I ask unanimous consent that a summary of the matters in the amendment also be printed in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF PROVISIONS IN LEADERSHIP AMENDMENT

The Summit agreement provides for deficit reduction of $30.2 billion in 1988 and $45.9 billion in 1989. The agreement established deficit reduction targets for defense and nondefense discretionary spending, revenues, entitlements and other direct spending programs. These savings were to be achieved through two pieces of legislation: the 1988 reconciliation bill and the continuing resolution.

The leadership amendment to S. 1920, the Senate-reported reconciliation bill, achieves the revenue and entitlement savings called for in the summit agreement. In addition, the amendment contains caps on defense and domestic spending that will result in the required savings in discretionary programs. The amendment to the underlying reconciliation bill results in total savings of $24.1 billion in 1988 and $28.0 billion in 1989. If the continuing resolution complies with the targets in the agreement, the total package will save $33.7 billion in 1988 and $46.2 billion in 1989.

The amendment contains the recommendations of the five Senate authorizing committees with jurisdiction over the areas specified in the summit agreement. These recommendations have been drafted, wherever possible, in consultation with the House committee of jurisdiction and the Administration.

RECONCILIATION—ORIGINAL PROVISIONS

The leadership amendment will leave intact the provisions of the Title I through Title III of S. 1920: Commerce, Science, and Transportation; Energy and Natural Resources; Environment and Public Works; as well as the previously enacted reconciliation provisions of the Banking, Housing, and Urban Affairs Committee. Some of the provisions in these titles contain user fees that may be used to reach the $400 million user fee target.

The leadership amendment strikes the remaining titles of S. 1920 and substitutes new language that achieves the summit agreement savings targets. The following summary provides a brief description of the major provisions in the leadership amendment. The attached table shows the current status of savings in the leadership package.

COMPONENTS OF LEADERSHIP AMENDMENT

[Dollars in billions]

	1988	1989	1988–89
Hard taxes	9.07	14.02	23.09
IRS compliance (net) [1]	1.60	2.90	4.50
User fees [2]	0.40	0.40	0.80
Discretionary spending [3]:			
Defense (Function 050)	5.00	8.20	13.20
Domestic discretionary	2.60	3.40	6.00
1989 effect of 1988 2 percent pay	0.00	2.40	2.40
Subtotal, discretionary	7.60	14.00	21.60
Entitlements and other:			
Medicare	2.00	3.50	5.51
Other finance provisions	0.22	0.17	0.39
Farm price supports [4]	1.20	1.30	2.50
GSL balances	0.23	.....	0.23
Postal Service	0.83	0.93	1.76
Cash management initiative	0.00	0.01	0.01
PBGC premiums	0.39	0.51	0.90
VA origination fee extension	0.20	0.20	0.40
VA loan guarantee	0.80	1.00	1.80
VA vendee loans	0.04	0.02	0.07
Subtotal, entitlements	5.92	7.65	13.57
Debt service	1.30	3.70	5.00
Deficit reduction under GRH scoring [5]	25.59	41.97	67.56
Asset sales	2.50	3.50	6.00
REA and RTB prepayments	5.35	.....	5.35
Grand total deficit reduction	33.74	46.17	79.91
Deficit targets in summit agreement	30.20	45.85	76.05

[1] The summit agreement provides for an increase in IRS staffing levels and a corresponding increase in revenues.
[2] The Senate-reported reconciliation bill contains user fee provisions sufficient to meet the requirements of the summit agreement. Details will be worked out in conference.
[3] The amendment contains caps on defense and nondefense discretionary spending for 1988 and 1989. Savings associated with these caps will be achieved upon enactment of final appropriations for 1988 and 1989 that comply with the agreement.
[4] Preliminary staff estimates.
[5] The debt service adjustment for this deficit calculation excludes savings from asset sales and prepayments.

Note.—Detail may not add to totals due to rounding.

RECONCILIATION—NEW PROVISIONS:

TITLE IV—FINANCE, SPENDING

Medicare and Medicaid

Total Medicare savings reflected in the revised bill are $2.0 billion in 1988 and $3.5 billion in 1989.

DRG Rates

Increases Diagnostic Related Group payments for 1988 by 0.5 percent for urban hospitals, 3.7 percent for rural hospitals, and 2.7 percent for hospitals exempt from the prospective payment system.

Medical Education

Reduces indirect medical education payments to hospitals by 1.8 percent in 1988, reflecting more recent data on allowable education costs. Phases out direct medical education payments for graduates of foreign medical schools.

Periodic Interim Payments

Eliminates advance interim payments for certain hospitals with relatively high indigent admissions as of July, 1989, and shifts the last 1988 payment to 1989.

Capital

Effective January 1, 1988, Medicare capital payments would be paid at reasonable cost minus twelve percent for the remainder of 1988 and for 1989. The moratorium on incorporating hospital capital into PPS would be extended to four years.

Hospital Outpatient Departments

Eliminates return on equity payments to proprietary hospital outpatient departments, and limits aggregate payments to all hospital outpatient departments for radiology services.

Sequester Continuation

The 2.3 percent reduction in Medicare payments under the sequester currently in effect would be extended through December 31, 1987, except that the reduction would continue through January 15, 1988 for physician services and durable medical equipment.

Physician Payments and Durable Medical Equipment

Payments would be frozen for three months. On April 1, 1988, customary charges for physicians would be updated, and prevailing rates would be increased by 3.6 percent for primary care services, and 0 percent for other physician services. Reduces payments for certain surgical procedures. Sets new procedures for establishing charge levels for new physicians. Also establishes bonus 5 percent payments for physicians practicing in rural underserved areas who accept Medicare as payment in full.

Clinical Labs

Fee schedules for clinical laboratories would be rebased to reflect a five percentage point reduction.

Premiums

Extends current law provision requiring premium financing to cover 25 percent of Part B cost through 1989.

Part B Deductible

Effective January 1, 1989, the Part B deductible would be increased from $75 to $85.

Mental Health

Broadens Medicare coverage for psychiatric services and clarifies coverage of psychological services in certain hospital and outpatient settings.

Rural Concerns

Contains several Medicare provisions to examine and improve the financial viability of rural hospitals and improve access to health care in rural areas.

HMOs

Makes several changes to strengthen beneficiary protections under Medicare HMO contracts and make technical changes to HMO law.

Infant Mortality

Expands Medicare to allow States to provide targeted coverage to pregnant women and children with incomes up to 160 percent of the Federal poverty level, with a $5 monthly premium charged between 130 and 160 percent of the poverty level, and to mandate coverage of children up to age 6.

Nursing Home Quality

Establishes additional standards for nursing home quality of care, including nursing and training requirements and protections of residents' rights.

Other Miscellaneous Health Provisions

Includes several Medicare and Medicaid provisions to provide for studies and demonstrations, improve collection of data and program administration, provide for expedited resolution of claims disputes, and enhance beneficiary protection.

Social Services and Income Security

TITLE XX

Increases authorization for Title XX social services block grant by $50 million for 1988 only.

Foster Care

Includes several provisions to improve eligibility and program administration for foster care.

Supplemental Security Income

Increase by $5 a month the amount that SSI individuals and couples in Medicaid institutions are allowed to keep from their monthly SSI checks for personal needs. Sets procedures for eligibility determination for those who are temporarily institutionalized, provides for continued Medicaid eligibility for certain SSI recipients, extends energy aid disregard, and makes other minor changes.

Other

Makes several additional small eligibility determination and program administration changes in SSI and AFDC, Child Support Enforcement, and Unemployment Insurance.

Pension Benefit Guaranty Corporation

Increases PBGC premiums from $8.50 to $14 per participant. Imposes a variable rate premium on underfunded pension programs equal to $6.00 per $1,000 of underfunding. Tightens rules on payment of minimum contributions, restricts granting of funding waivers and plan terminations under Chapter 11. Provides the plan with a lien against employer assets for significant unfunded liabilities under certain circumstances. Net deficit reduction of $205 million in 1988, $201 million in 1989, and $231 million in 1990. (Note that Title VI, the Labor and Human Resources Committee provisions include changes to the PBGC that are not consistent with the Finance provisions. The final PBGC provisions will be worked out in conference.)

Debt Collection

Extends IRS refunds offset authority for three years for all Federal agencies. Saves an additional $300 billion in 1988 and $424 billion in 1989.

TITLE IV—FINANCE, REVENUES AND USER FEES

Committee package increases revenue $9.1 billion in 1988 and $14.0 billion in 1989 as required by the Leadership agreement. The Committee further recommends increases in user fees of $335 million in 1988 and $318 million in 1989.

Employment Taxes

Expands employer share of FICA tax to include all cash tips. Requires income of inactive duty reservists, certain agricultural employees, family members and group-term life insurance to be treated as wages. Increases railroad retirement taxes and extends FUTA tax for three years. Revenues would be increased by $1.2 billion in 1988 and $1.7 billion in 1989.

Excise Taxes

Maintains 3 percent telephone excise tax through 1990. Requires collection of diesel and special motor fuels taxes on sales to retailers. Together these provisions generate additional receipts of $1.5 billion in 1988 and $2.5 billion in 1989.

Gift and Estate Taxes

Freezes current gift and estate tax rates for two years. Revenue estimates anticipate $21 million in 1988 and $176 million in 1989.

Correction of ESOP Estate Provision

Modifies ESOP estate tax provision to correct technical drafting errors incorporated as part of the 1986 Tax Reform Act. Provision also limits maximum allowable deductions to 50 percent of taxable estates and limits deductions to proceeds of sales of employer securities that are issued by domestic corporations that have no publicly traded stock outstanding. Closing loophole generates $1.2 billion in 1988 and $1.6 billion in 1989.

Further Reform of the Tax Code

Accounting Provisions

Repeals cash method of accounting for farms with receipts over $25 million. Terminates special rule that permits taxpayers a deduction for additions to a reserve for vacation pay. Terminates installment method of accounting for dealers and requires contributions to fund pension past service liability to be subject to uniform capitalization rules. Reforms to accounting provisions increase tax collections by $5.1 billion in 1988 and $2.5 billion in 1989.

Corporate Provisions

Modifies corporate estimated tax rules to require larger estimated tax payments. Modifies computation of earnings and profits for intercorporate dividends and basis adjustment, repeals graduated tax rates for personal service corporations. Corporate provisions generate new revenues of $1.7 billion in 1988 and $1.2 billion in 1989.

Partnership Provisions

Suspends at the partnership level, losses and deductions of publicly traded limited partnerships; allows them to be used against income from that partnership with a carryforward mechanism. Reforms to partner-

ship provisions increase taxes by $77 million in 1988 and $127 in 1989.

Miscellaneous Provisions

Eliminates child and dependent care credit for overnight camp expenses. Precludes employers from making deductible contributions to over-funded pension plan. Proposals increase taxes by $690 million in 1988 and $1.6 billion in 1989.

User Fees

Requires user fees for certain IRS services including letter rulings, determination letters, opinion letters and other written statements requested by individuals and organizations. Increases BATF occupational taxes of the Bureau of Alcohol, Tobacco and Firearms. Amends and extends current Customs Service user fee schedules. Total user fees receipts are projected at $335 million in 1988 and $318 million in 1989.

TITLE V—GOVERNMENTAL AFFAIRS

Federal Pay

Provides for a 2 percent pay increase in 1988 for all Federal civilian employees (except members of Congress) and for all uniformed military personnel. Delays pay raise to January in 1989 and 1990 for all civilian and all uniformed military personnel.

Cash Management

Mandates the establishment of procedures governing transfers of funds between the federal government and state governments in an effort to minimize time between the availability and outlay of federal funds for programs administered by the States. Provides for reciprocal interest payments on funds held for overlong periods of time.

Postal Service

Directs the Postal Service to pay Federal Employee Health Benefits costs for all postal annuitants and to pay for a portion of postal service retiree COLAs on an accrual basis in 1988 and 1989, while covering full costs for new retirees on a cash basis from 1990 on. Both these costs are currently subsidized by general revenues. Requires that the Postal Service delay its capital investment program and absorb FEHB costs within its overall budget to cover the costs of these reforms. Increases in postal rates, borrowing, or operating budgets would not be allowed to finance these new payments.

TITLE VI—LABOR AND HUMAN RESOURCES

Guaranteed Student Loan Program savings

Directs the Department of Education to determine maximum cash reserve levels for all Guaranteed Student Loan Program guaranty agencies. Agencies deemed to hold cash reserves in excess of the Secretary's determination, based on financial guidelines established by the General Accounting Office, would be required to deduct default claim payments first from excess reserve funds.

The language would provide an appeal process for agencies able to demonstrate significant adverse consequences if they deplete cash reserves to the level determined by the Secretary. A waiver, in whole or part, could be granted. Authority under this section would be repealed on September 30, 1989.

Savings from the plan are estimated to be $250 million in 1988.

Pension Benefit Guaranty Corporation

Increases PBGC premium from $8.50 to $25 per participant. Increases minimum funding standard for employer contributions. Limits granting of funding waivers to hardship employers and holds employers liable for termination of underfunded pension plans. Establishes certain conditions to be met to withdraw assets from pension plans and imposes excise tax if an amount in excess of permitted amount is withdrawn. (Note that Title IV, the Finance Committee provisions include changes to the PBGC that are not consistent with the Labor and Human Resources Committee provisions. The final PBGC provisions will be worked out in conference.)

TITLE VII—VETERANS AFFAIRS

Increasing Cash Sales of Acquired Foreclosure Properties

Requires the Veterans Administration to increase the proportion of acquired foreclosure properties sold on a cash basis, rather than through a direct VA loan. Current law requires cash sales for between 25 and 40 percent of foreclosed properties. The bill requires cash sales for between 35 and 50 percent of foreclosed properties.

Repeal of Asset Sale Provision

Section 2 of P.L. 100-136, which required the sale of Veteran's Administration housing vendee loans with recourse, is repealed. Loans could then be sold without recourse.

Extension of Loan Origination Fee

The recently-lapsed Veterans' Administration one percent housing loan origination fee is extended for two years.

TITLE VIII—AGRICULTURE, NUTRITION, AND FORESTRY

One percent reduction in income and price supports

Provides for an additional 1 percent reduction in the target price for the 1988 crops of wheat, feed grains, upland cotton, and rice. Reduces expenditures under the dairy price support program for 1988 by an amount equivalent to a 1 percent support price reduction. In addition, reduces the support price for wool and mohair for 1988 by 1 percent. Saves $160 million in 1988; $550 million over two years.

Loan Rate Decline

Loan rates for the 1988 crops of wheat, feed grains, upland cotton and rice may decline by 1 percent from 1987 levels. Current law would permit a 5 percent decline. The 1 percent limit applies to the 1988 crop only. Loan rates for the 1989 crop would retain the 5 percent maximum reduction. This provision results in savings of $135 million in 1988; $410 million over two years due to reductions in deficiency payments.

Whole Base Bid

Establishes a program for the 1988 and 1989 crops of wheat, feed grains, upland cotton, and rice which would permit a producer to retire his entire base acreage in exchange for a base diversion payment. Payment levels under this program will be established by a bid procedure. The program contains limitations on the amount of acreage in any county that may be retired. USDA/OMB estimates that this provision will save $310 million over two years.

Acreage Limitation Program for Feed Grains

Current law contains a 20 percent maximum acreage limitation program. This provision mandates a 5 percent increase in the maximum acreage limitation for the 1988 and 1989 crops of feed grains. This proposal would permit producers to plant soybeans, sunflowers and other oilseeds on this additional idled acres without losing historical base acreage.

In the case of the 1989 crop of feed grains, the Secretary may waive this 5 percent increase and instead provide for a 2.5 percent increase in the acreage limitation program if 1989 soybean stocks are estimated to exceed 425 million bushels. Soybeans may not, however, be planted on the 2.5 percent of the acreage base idled under such 1989 program.

Authorizes a 5 percent paid land diversion program for the 1988 and 1989 crops and establishes payment rates of $2.00 per bushel for 1998; $1.75 per bushel for 1989. However, if the Secretary does not implement the additional 5 percent acreage limitation program but instead implements the 2.5 percent program, the paid land diversion program for the 1989 crop of feed grains would be 7.5 percent with a payment rate of $1.75 per bushel.

Oilseed Marketing Loan

Mandates a marketing loan program for the 1988 and 1989 crops of soybeans, sunflowers and cottonseed. The established support price for sunflowers is 8 cents per pound.

Commercial Storage Reductions

Directs the Commodity Credit Corporation to reduce its expenditures for commercial storage, handling and transportation by $230 million over 1988 and 1989. CBO estimates that this provision will save $15 million in 1988; $40 million in 1989. USDA/OMB estimate that the same language saves $60 million in 1989; $170 million in 1989.

REA and RTB Loan Prepayments

Allows Rural Electrification Administration (REA) and Rural Telephone Bank (RTB) borrowers to repay their guaranteed loans requiring only that a processing fee be paid. Increases contributions by $5.3 billion in 1988 relative to the sequester (GRH) baseline.

TITLE IX—MISCELLANEOUS PROVISIONS

Defense and Domestic Spending Limits

The Leadership amendment contains budget authority and outlay ceilings for defense and nondefense spending for 1988 and 1989. These ceilings, which are shown in the table below, are consistent with the summit agreement.

	1988	1989
Defense (050):		
Budget authority	292.0	299.5
Outlays	285.4	294.0
Nondefense:		
Budget authority	145.1	160.3
Outlays	148.1	169.2

The outlay ceilings for nondefense discretionary spending are below the GRH baseline by $2.6 billion in 1988 and $3.4 billion in 1989; The nondefense discretionary ceilings are below the CBO baseline by $5.4 billion in 1988 and $8.1 billion in 1989.

In the Senate, these ceilings will be enforced through a three-fifths point of order that will lie against any fiscal year 1989 budget resolution that is not consistent with the agreement. In addition, the House and Senate Appropriations Committees are required to make their 302(b) subdivisions for 1989 consistent with the defense and domestic spending ceilings specified in this amendment.

Language Rescinding the Sequester Order

The leadership amendment contains language that rescinds the sequester order issued by the President on November 20, 1987. In addition, this language restores any sequestrable resource that has been reduced

or sequestered by the final order except for reductions in payments to medicare providers. The Finance Committee's recommendations specify that the reductions for physician services and durable medical equipment would continue through January 15, 1988 while all other reductions in provider payments would expire December 31, 1987.

The language makes the rescinding of the sequester order and the restoration of sequestered resources dependent upon the enactment of the 1988 continuing resolution and reconciliation bill that achieve the deficit reduction contemplated in the Summit agreement.

Submission of President's Budget

The amendment contains language changing the date for the submission of the President's budget to January 25 in 1988.

Technical Amendments to the Congressional Budget Act

Other language in the amendment makes technical corrections to the Congressional Budget Act.

Asset Sales

The leadership amendment includes asset sales proposals sufficient to comply with the summit agreement. In addition to the provision in the Agriculture title on the prepayment of REA loans, the leadership amendment directs loan sales from 11 different portfolios achieving deficit reduction of $2.5 billion in 1988 and $3.5 billion in 1989.

The following table provides a summary of the specific loan sales and the savings assumed to be achieved from each.

PROPOSED LOAN SALES

[In millions of dollars]

	1988	1989
Loan sales:		
Rural housing loan sales	1,590	2,350
Rural Development Insurance Fund	0	600
HUD community development	120	50
College housing loans	50	0
Higher education facilities	50	0
Export-Import Bank	500	500
Bureau of Reclamation	130	0
HHS medical facilities loans	40	0
HHS health maintenance loans	20	0
Total loan sales	2,500	3,500

OTHER CONSIDERATIONS

User Fees

The leadership amendment assumes that the final package will include user fees with savings of $400 million in both 1988 and 1989 and that the details will be worked out in conference. The user fee provisions may be drawn from the Finance provisions in the leadership amendment and from the provisions in the reconciliation bill as reported. The leadership amendment for the Finance Committee includes user fee provisions that would save $335 million in 1988 and $318 million in 1989. The Commerce, Science, and Transportation title, the Energy and Natural Resources title, and the Environment and Public Works title contain seven separate user fee provisions that save $404 million in 1988 and $508 million in 1989.

IRS Compliance

The leadership agreement assumes increases in revenues of $1.9 billion in 1988 resulting from increased funding of $300 million for Internal Revenue Service tax collection efforts. These savings will be accomplished through the appropriations process.

Mr. BYRD. Mr. President, I thank both Senator CHILES and Senator DOMENICI and all other Senators and staffs who have been responsible for putting together the leadership amendment. They have spent hours and days and weeks, and those hours have not ceased. Those hours of blood, sweat, and some apparent tears on the part of myself, if not them; I will accept that feeling at least. I thank them all for the efforts they have made. They have been very, very diligent and the problems have been very, very difficult.

Mr. President, I ask unanimous consent—this is with the approval of Mr. CHILES and other Senators—that amendment No. 1254 be considered as having been sent to the desk for printing, by the majority leader on behalf of all the other Senators named as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. BYRD. Mr. President, first of all, let me say tomorrow will be a very busy day. I would expect it to be a long day. Action will be going forward on the reconciliation bill. Time is running out. The Senate needs to get the bill to conference.

The Senate still has to take up the continuing resolution which will follow in the wake of action on the reconciliation measure.

So I would repeat to all Senators that in my judgment at this point it appears to me that there will have to be a Saturday session. Both these bills have to go to conference. They have to be acted upon there and sent to the President, and signed or at least we must have the assurance of the signature before we go home. So I am sorry to be the bearer of bad tidings but circumstances dictate such.

RECESS UNTIL 9 A.M. TOMORROW

Mr. BYRD. If there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 9 o'clock tomorrow morning.

The motion was agreed to; and, at 6:15 p.m., the Senate recessed until tomorrow, Thursday, December 10, 1987, at 9 a.m.