

104TH CONGRESS  
2D SESSION

# H. R. 3185

To provide increased access to health care benefits, to provide increased portability of health care benefits, to provide increased security of health care benefits, to increase the purchasing power of individuals and small employers, to increase the deduction for health insurance costs of self-employed individuals, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 1996

Mr. DINGELL (for himself, Mr. BENTSEN, and Mr. SPRATT) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Commerce, and Economic and Educational Opportunities, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide increased access to health care benefits, to provide increased portability of health care benefits, to provide increased security of health care benefits, to increase the purchasing power of individuals and small employers, to increase the deduction for health insurance costs of self-employed individuals, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Health Insurance Re-  
3 form Act of 1996”.

4               **TITLE I—HEALTH CARE ACCESS,**  
5               **PORTABILITY, AND RENEWABILITY**

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6 **SEC. 100. DEFINITIONS.**

7       As used in this title:

8               (1) **BENEFICIARY.**—The term “beneficiary” has  
9       the meaning given such term under section 3(8) of

1 the Employee Retirement Income Security Act of  
2 1974 (29 U.S.C. 1002(8)).

3 (2) EMPLOYEE.—The term “employee” has the  
4 meaning given such term under section 3(6) of the  
5 Employee Retirement Income Security Act of 1974  
6 (29 U.S.C. 1002(6)).

7 (3) EMPLOYER.—The term “employer” has the  
8 meaning given such term under section 3(5) of the  
9 Employee Retirement Income Security Act of 1974  
10 (29 U.S.C. 1002(5)), except that such term shall in-  
11 clude only employers of two or more employees.

12 (4) EMPLOYEE HEALTH BENEFIT PLAN.—

13 (A) IN GENERAL.—The term “employee  
14 health benefit plan” means any employee wel-  
15 fare benefit plan, governmental plan, or church  
16 plan (as defined under paragraphs (1), (32),  
17 and (33) of section 3 of the Employee Retire-  
18 ment Income Security Act of 1974 (29 U.S.C.  
19 1002 (1), (32), and (33))) that provides or pays  
20 for health benefits (such as provider and hos-  
21 pital benefits) for participants and beneficiaries  
22 whether—

23 (i) directly;

(ii) through a group health plan offered by a health plan issuer as defined in paragraph (8); or

(iii) otherwise.

(B) RULE OF CONSTRUCTION.—An employee health benefit plan shall not be construed to be a group health plan, an individual health plan, or a health plan issuer.

(C) ARRANGEMENTS NOT INCLUDED.—Such term does not include the following, or any combination thereof:

(i) Coverage only for accident, or disability income insurance, or any combination thereof.

(ii) Medicare supplemental health insurance (as defined under section 1882(g)(1) of the Social Security Act).

(iii) Coverage issued as a supplement to liability insurance.

(iv) Liability insurance, including general liability insurance and automobile liability insurance.

(v) Workers compensation or similar insurance.

1 (vi) Automobile medical payment in-  
2 surance.

3 (vii) Coverage for a specified disease  
4 or illness.

5 (viii) Hospital or fixed indemnity in-  
6 surance.

7 (ix) Short-term limited duration in-  
8 surance.

9 (x) Credit-only, dental-only, or vision-  
10 only insurance.

11 (xi) A health insurance policy provid-  
12 ing benefits only for long-term care, nurs-  
13 ing home care, home health care, commu-  
14 nity-based care, or any combination there-  
15 of.

16 (5) FAMILY.—

17 (A) IN GENERAL.—The term “family”  
18 means an individual, the individual’s spouse,  
19 and the child of the individual (if any).

20 (B) CHILD.—For purposes of subpara-  
21 graph (A), the term “child” means any individ-  
22 ual who is a child within the meaning of section  
23 151(c)(3) of the Internal Revenue Code of  
24 1986.

25 (6) GROUP HEALTH PLAN.—

1 (A) IN GENERAL.—The term “group  
2 health plan” means any contract, policy, certifi-  
3 cate or other arrangement offered by a health  
4 plan issuer to a group purchaser that provides  
5 or pays for health benefits (such as provider  
6 and hospital benefits) in connection with an em-  
7 ployee health benefit plan.

8 (B) ARRANGEMENTS NOT INCLUDED.—  
9 Such term does not include the following, or  
10 any combination thereof:

11 (i) Coverage only for accident, or dis-  
12 ability income insurance, or any combina-  
13 tion thereof.

14 (ii) Medicare supplemental health in-  
15 surance (as defined under section  
16 1882(g)(1) of the Social Security Act).

17 (iii) Coverage issued as a supplement  
18 to liability insurance.

19 (iv) Liability insurance, including gen-  
20 eral liability insurance and automobile li-  
21 ability insurance.

22 (v) Workers compensation or similar  
23 insurance.

24 (vi) Automobile medical payment in-  
25 surance.

1 (vii) Coverage for a specified disease  
2 or illness.

3 (ix) Short-term limited duration in-  
4 surance.

5 (x) Credit-only, dental-only, or vision-  
6 only insurance.

7 (xi) A health insurance policy provid-  
8 ing benefits only for long-term care, nurs-  
9 ing home care, home health care, commu-  
10 nity-based care, or any combination there-  
11 of.

12 (7) GROUP PURCHASER.—The term “group  
13 purchaser” means any person (as defined under  
14 paragraph (9) of section 3 of the Employee Retirement  
15 Income Security Act of 1974 (29 U.S.C.  
16 1002(9)) or entity that purchases or pays for health  
17 benefits (such as provider or hospital benefits) on  
18 behalf of two or more participants or beneficiaries in  
19 connection with an employee health benefit plan. A  
20 health plan purchasing cooperative established under  
21 section 131 shall not be considered to be a group  
22 purchaser.

23 (8) HEALTH PLAN ISSUER.—The term “health  
24 plan issuer” means any entity that is licensed (prior  
25 to or after the date of enactment of this Act) by a

1 State to offer a group health plan or an individual  
2 health plan.

3 (9) HEALTH STATUS.—The term “health sta-  
4 tus” includes, with respect to an individual, medical  
5 condition, claims experience, receipt of health care,  
6 medical history, genetic information, evidence of in-  
7 surability (including conditions arising out of acts of  
8 domestic violence), or disability.

9 (10) PARTICIPANT.—The term “participant”  
10 has the meaning given such term under section 3(7)  
11 of the Employee Retirement Income Security Act of  
12 1974 (29 U.S.C. 1002(7)).

13 (11) PLAN SPONSOR.—The term “plan spon-  
14 sor” has the meaning given such term under section  
15 3(16)(B) of the Employee Retirement Income Secu-  
16 rity Act of 1974 (29 U.S.C. 1002(16)(B)).

17 (12) SECRETARY.—The term “Secretary”, un-  
18 less specifically provided otherwise, means the Sec-  
19 retary of Labor.

20 (13) STATE.—The term “State” means each of  
21 the several States, the District of Columbia, Puerto  
22 Rico, the United States Virgin Islands, Guam,  
23 American Samoa, and the Commonwealth of the  
24 Northern Mariana Islands.



## **Subtitle A—Group Market Rules**

### **SECTION 101. GUARANTEED AVAILABILITY OF HEALTH COVERAGE.**

In General.—

(1) NONDISCRIMINATION.—Except as provided in subsection (b), section 102 and section 103—

(A) a health plan issuer offering a group health plan may not decline to offer whole group coverage to a group purchaser desiring to purchase such coverage; and

(B) an employee health benefit plan or a health plan issuer offering a group health plan may establish eligibility, continuation of eligibility, enrollment, or premium; contribution requirements under the terms of such plan, except that such requirements shall not be based on health status (as defined in section 100(9)).

(2) HEALTH PROMOTION AND DISEASE PREVENTION.—Nothing in this subsection shall prevent an employee health benefit plan or a health plan issuer from establishing premium; discounts or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

(b) APPLICATION OF CAPACITY LIMITS.—

1           (1) IN GENERAL.—Subject to paragraph (2), a  
2       health plan issuer offering a group health plan may  
3       cease offering coverage to group purchasers under  
4       the plan if—

5           (A) the health plan issuer ceases to offer  
6       coverage to any additional group purchasers;  
7       and

8           (B) the health plan issuer can demonstrate  
9       to the applicable certifying authority (as defined  
10      in section 142(d)), if required, that its financial  
11      or provider capacity to serve previously covered  
12      participants and beneficiaries (and additional  
13      participants and beneficiaries who will be ex-  
14      pected to enroll because of their affiliation with  
15      a group purchaser or such previously covered  
16      participants or beneficiaries) will be impaired if  
17      the health plan issuer is required to offer cov-  
18      erage to additional group purchasers.

19      Such health plan issuer shall be prohibited from of-  
20      fering coverage after a cessation in offering coverage  
21      under this paragraph for a 6-month period or until  
22      the health plan issuer can demonstrate to the appli-  
23      cable certifying authority (as defined in section  
24      142(d)) that the health plan issuer has adequate ca-  
25      pacity, whichever is later.

1           (2) FIRST-COME-FIRST-SERVED.—A health plan  
2           issuer offering a group health plan is only eligible to  
3           exercise the limitations provided for in paragraph  
4           (1) if the health plan issuer offers coverage to group  
5           purchasers under such plan on a first-come-first-  
6           served basis or other basis established by a State to  
7           ensure a fair opportunity to enroll in the plan and  
8           avoid risk selection.

9           (e) CONSTRUCTION.—

10          (1) MARKETING OF GROUP HEALTH PLANS.—  
11          Nothing in this section shall be construed to prevent  
12          a State from requiring health plan issuers offering  
13          group health plans to actively market such plans.

14          (2) INVOLUNTARY OFFERING OF GROUP  
15          HEALTH PLANS.—Nothing in this section shall be  
16          construed to require a health plan issuer to involun-  
17          tarily offer group health plans in a particular mar-  
18          ket. For the purposes of this paragraph, the term  
19          “market” means either the large employer market or  
20          the small employer market (as defined under appli-  
21          cable State law, or if not so defined, an employer  
22          with not more than 50 employees).

23   **SEC. 102. GUARANTEED RENEWABILITY OF HEALTH COV-**  
24                           **ERAGE.**

25          (a) IN GENERAL.—

1           (1) GROUP PURCHASER.—Subject to sub-  
2       sections (b) and (c), a group health plan shall be re-  
3       newed or continued in force by a health plan issuer  
4       at the option of the group purchaser, except that the  
5       requirement of this subparagraph shall not apply in  
6       the case of—

7           (A) the nonpayment of premiums or con-  
8       tributions by the group purchaser in accordance  
9       with the terms of the group health plan or  
10      where the health plan issuer has not received  
11      timely premium payments;

12          (B) fraud or misrepresentation of material  
13      fact on the part of the group purchaser;

14          (C) the termination of the group health  
15      plan in accordance with subsection (b); or

16          (D) the failure of the group purchaser to  
17      meet contribution or participation requirements  
18      in accordance with paragraph (3).

19       (2) PARTICIPANT.—Subject to subsections (b)  
20      and (c), coverage under an employee health benefit  
21      plan or group health plan shall be renewed or con-  
22      tinued in force, if the group purchaser elects to con-  
23      tinue to provide coverage under such plan, at the op-  
24      tion of the participant (or beneficiary where such  
25      right exists under the terms of the plan or under ap-

1 plicable law), except that the requirement of this  
2 paragraph shall not apply in the case of—

3 (A) the nonpayment of premiums or con-  
4 tributions by the participant or beneficiary in  
5 accordance with the terms of the employee  
6 health benefit plan or group health plan or  
7 where such plan has not received timely pre-  
8 mium payments.

9 (B) fraud or misrepresentation of material  
10 fact on the part of the participant or bene-  
11 ficiary relating to an application for coverage or  
12 claim for benefits;

13 (C) the termination of the employee health  
14 benefit plan or group health plan;

15 (D) loss of eligibility for continuation cov-  
16 erage as described in part 6 of subtitle B of  
17 title I of the Employee Retirement Income Se-  
18 curity Act of 1974 (29 U.S.C. 1161 et seq.); or

19 (E) failure of a participant or beneficiary  
20 to meet requirements for eligibility for coverage  
21 under an employee health benefit plan or group  
22 health plan that are not prohibited by this title.

23 (3) RULES OF CONSTRUCTION.—Nothing in  
24 this subsection, nor in section 101(a), shall be con-  
25 strued to—

1 (A) preclude a health plan issuer from es-  
2 tablishing employer contribution rules or group  
3 participation rules for group health plans as al-  
4 lowed under applicable State law;

5 (B) preclude a plan defined in section  
6 3(37) of the Employee Retirement Income Se-  
7 curity Act of 1974 (29 U.S.C. 1102(37)) from  
8 establishing employer contribution rules or  
9 group participation rules; or

10 (C) permit individuals to decline coverage  
11 under an employee health benefit plan if such  
12 right is not otherwise available under such plan.

13 (b) TERMINATION OF GROUP HEALTH PLANS.—

14 (1) PARTICULAR TYPE OF GROUP HEALTH  
15 PLAN NOT OFFERED.—In any case in which a health  
16 plan issuer decides to discontinue offering a particu-  
17 lar type of group health plan. A group health plan  
18 of such type may be discontinued by the health plan  
19 issuer only if—

20 (A) the health plan issuer provides notice  
21 to each group purchaser covered under a group  
22 health plan of this type (and participants and  
23 beneficiaries covered under such group health  
24 plan) of such discontinuation at least 90 days

1 prior to the date of the discontinuation of such  
2 plan;

3 (B) the health plan issuer offers to each  
4 group purchaser covered under a group health  
5 plan of this type, the option to purchase any  
6 other group health plan currently being offered  
7 by the health plan issuer; and

8 (C) in exercising the option to discontinue  
9 a group health plan of this type and in offering  
10 one or more replacement plans, the health plan  
11 issuer acts uniformly without regard to the  
12 health status of participants or beneficiaries  
13 covered under the group health plan, or new  
14 participants or beneficiaries who may become  
15 eligible for coverage under the group health  
16 plan.

17 (2) DISCONTINUANCE OF ALL GROUP HEALTH  
18 PLANS.—

19 (A) IN GENERAL.—In any case in which a  
20 health plan issuer elects to discontinue offering  
21 all group health plans in a State, a group  
22 health plan may be discontinued by the health  
23 plan issuer only if—

24 (i) the health plan issuer provides no-  
25 tice to the applicable certifying authority

1 (as defined in section 142(d)) and to each  
2 group purchaser (and participants and  
3 beneficiaries covered under such group  
4 health plan) of such discontinuation at  
5 least 180 days prior to the date of the ex-  
6 piration of such plan, and

7 (ii) all group health plans issued or  
8 delivered for issuance in the State or dis-  
9 continued and coverage under such plans is  
10 not renewed.

11 (B) APPLICATION OF PROVISIONS.—The  
12 provisions of this paragraph and paragraph (3)  
13 may be applied separately by a health plan is-  
14 suer—

15 (i) to all group health plans offered to  
16 small employers (as defined under applica-  
17 ble State law, or if not so defined, an em-  
18 ployer with not more than 50 employees);  
19 or

20 (ii) to all other group health plans of-  
21 fered by the health plan issuer in the  
22 State.

23 (3) PROHIBITION ON MARKET REENTRY.—In  
24 the case of a discontinuation under paragraph (2),  
25 the health plan issuer may not provide for the issu-



1       ance of any group health plan in the market sector  
2       (as described in paragraph (2)(B)) in which issuance  
3       of such group health plan was discontinued in the  
4       State involved during the 5-year period beginning on  
5       the date of the discontinuation of the last group  
6       health plan not so renewed.

7       (c) TREATMENT OF NETWORK PLANS.—

8           (1) GEOGRAPHIC LIMITATIONS.—A network  
9       plan (as defined in paragraph (2)) may deny contin-  
10      ued participation under such plan to participants or  
11      beneficiaries who neither live, reside, nor work in an  
12      area in which such network plan is offered, but only  
13      if such denial is applied uniformly, without regard to  
14      health status of particular participants or bene-  
15      ficiaries.

16          (2) NETWORK PLAN.—As used in paragraph  
17      (1), the term “network plan” means an employee  
18      health benefit plan or a group health plan that ar-  
19      ranges for the financing and delivery of health care  
20      services to participants or beneficiaries covered  
21      under such plan, in whole or in part, through ar-  
22      rangements with providers.

23      (d) COBRA COVERAGE.—Nothing in subsection  
24      (a)(2)(E) or subsection (c) shall be construed to affect any  
25      right to COBRA continuation coverage as described in

1 part 6 of subtitle B of title I of the employee Retirement  
2 Income Security Act of 1974 (29 U.S.C. 1161 et seq.).

3 **SEC. 103. PORTABILITY OF HEALTH COVERAGE AND LIM-**  
4 **TATION ON PREEXISTING CONDITION EXCLU-**  
5 **SIONS.**

6 (a) IN GENERAL.—An employee health benefit plan  
7 or a health plan issuer offering a group health plan may  
8 impose a limitation or exclusion of benefits relating to  
9 treatment of a preexisting condition based on the fact that  
10 the condition existed prior to the coverage of the partici-  
11 pant or beneficiary under the plan only if—

12 (1) the limitation or exclusion extends for a pe-  
13 riod of not more than 12 months after the date of  
14 enrollment in the plan;

15 (2) the limitation or exclusion does not apply to  
16 an individual who, within 30 days of the date of  
17 birth or placement for adoption (as determined  
18 under section 609(c)(3)(B) of the Employee Retire-  
19 ment Income Security Act of 1974 (29 U.S.C.  
20 1169(c)(3)(B)), was covered under the plan; and

21 (3) the limitation or exclusion does not apply to  
22 a pregnancy.

23 (b) CREDITING OF PREVIOUS QUALIFYING COV-  
24 ERAGE.—

1           (1) IN GENERAL.—Subject to paragraph (4), an  
2       employee health benefit plan or a health plan issuer  
3       offering a group health plan shall provide that if a  
4       participant or beneficiary is in a period of previous  
5       qualifying coverage as of the date of enrollment  
6       under such plan, any period of exclusion or limita-  
7       tion of coverage with respect to a preexisting condi-  
8       tion shall be reduced by 1 month for each month in  
9       which the participant or beneficiary was in the pe-  
10      riod of previous qualifying coverage. With respect to  
11      an individual described in subsection (a)(2) who  
12      maintains continuous coverage, no limitation or ex-  
13      clusion of benefits relating to treatment of a pre-  
14      existing condition may be applied to a child within  
15      the child’s first 12 months of life or within 12  
16      months after the placement of a child for adoption.

17           (2) DISCHARGE OF DUTY.—An employee health  
18      benefit plan shall provide documentation of coverage  
19      to participants and beneficiaries who coverage is ter-  
20      minated under the plan. Pursuant to regulations  
21      promulgated by the Secretary, the duty of an em-  
22      ployee health benefit plan to verify previous qualify-  
23      ing coverage with respect to a participant or bene-  
24      ficiary is effectively discharged when such employee  
25      health benefit plan provides documentation to a par-

1 participant or beneficiary that includes the following in-  
2 formation:

3 (A) the dates that the participant or bene-  
4 ficiary was covered under the plan; and

5 (B) the benefits and cost-sharing arrange-  
6 ment available to the participant or beneficiary  
7 under such plan.

8 An employee health benefit plan shall retain the doc-  
9 umentation provided to a participant or beneficiary  
10 under subparagraphs (A) and (B) for at least the  
11 12-month period following the date on which the  
12 participant or beneficiary ceases to be covered under  
13 the plan. Upon request, an employee health benefit  
14 plan shall provide a second copy of such documenta-  
15 tion or such participant or beneficiary within the 12-  
16 month period following the date of such ineligibility.

17 (3) DEFINITIONS.—As used in this section:

18 (A) PREVIOUS QUALIFYING COVERAGE.—

19 The term “previous qualifying coverage” means  
20 the period beginning on the date—

21 (i) a participant or beneficiary is en-  
22 rolled under an employee health benefit  
23 plan or a group health plan, and ending on  
24 the date the participant or beneficiary is  
25 not so enrolled; or

1 (ii) an individual is enrolled under an  
2 individual health plan (as defined in sec-  
3 tion 113) or under a public or private  
4 health plan established under Federal or  
5 State law, and ending on the date the indi-  
6 vidual is not so enrolled;  
7 for a continuous period of more than 30 days  
8 (without regard to any waiting period).

9 (B) LIMITATION OR EXCLUSION OF BENE-  
10 FITS RELATING TO TREATMENT OF A PRE-  
11 EXISTING CONDITION.—The term “limitation or  
12 exclusion of benefits relating to treatment of a  
13 preexisting condition” means a limitation or ex-  
14 clusion of benefits imposed on an individual  
15 based on a preexisting condition of such individ-  
16 ual.

17 (4) EFFECT OF PREVIOUS COVERAGE.—An em-  
18 ployee health benefit plan or a health plan issuer of-  
19 fering a group health plan may impose a limitation  
20 or exclusion of benefits relating to the treatment of  
21 a preexisting condition, subject to the limits in sub-  
22 section (a)(1), only to the extent that such service  
23 or benefit was not previously covered under the  
24 group health plan, employee health benefit plan, or  
25 individual health plan in which the participant or

1 beneficiary was enrolled immediately prior to enroll-  
2 ment in the plan involved.

3 (c) LATE ENROLLEES.—Except as provided in sec-  
4 tion 104, with respect to a participant or beneficiary en-  
5 rolling in an employee health benefit plan or group health  
6 plan during a time that is other than the first opportunity  
7 to enroll during an enrollment period of at least 30 days,  
8 coverage with respect to benefits or services relating to  
9 the treatment of a preexisting condition in accordance  
10 with subsection (a) and (b) may be excluded except the  
11 period of such exclusion may not exceed 18 months begin-  
12 ning on the date of coverage under the plan.

13 (d) AFFILIATION PERIODS.—With respect to a par-  
14 ticipant or beneficiary who would otherwise be eligible to  
15 receive benefits under an employee health benefit plan or  
16 a group health plan but for the operation of a preexisting  
17 condition limitation or exclusion, if such plan does not uti-  
18 lize a limitation or exclusion of benefits relating to the  
19 treatment of a preexisting condition, such plan may im-  
20 pose an affiliation period on such participant or bene-  
21 ficiary not to exceed 60 days (or in the case of a late par-  
22 ticipant or beneficiary described in subsection (c), 90  
23 days) from the date on which the participant or bene-  
24 ficiary would otherwise be eligible to receive benefits under  
25 the plan. An employee health benefit plan or a health plan

1 issuer offering a group health plan may also use alter-  
2 native methods to address adverse selection as approved by  
3 the applicable certifying authority (as defined in section  
4 142(d)). During such an affiliation period, the plan may  
5 not be required to provide health care services or benefits  
6 and no premium shall be charged to the participant or  
7 beneficiary.

8 (e) PREEXISTING CONDITIONS.—For purposes of this  
9 section, the term “preexisting condition” means a condi-  
10 tion, regardless of the cause of the condition, for which  
11 medical advice, diagnosis, care, or treatment was rec-  
12 ommended or received within the 6-month period ending  
13 on the day before the effective date of the coverage (with-  
14 out regard to any waiting period).

15 (f) STATE FLEXIBILITY.—Nothing in this section  
16 shall be construed to preempt State laws that—

17 (1) require health plan issuers to impose a limi-  
18 tation or exclusion of benefits relating to the treat-  
19 ment of a preexisting condition for periods that are  
20 shorter than those provided for under this section;  
21 or

22 (2) allow individuals, participants, and bene-  
23 ficiaries to be considered to be in a period of pre-  
24 vious qualifying coverage if such individual, partici-  
25 pant, or beneficiary experiences a lapse in coverage

1       that is greater than the 30-day period provided for  
2       under subsection (b)(3);  
3       unless such laws are preempted by section 514 of the Em-  
4       ployee Retirement Income Security Act of 1974 (29  
5       U.S.C. 1144).

6       **SEC. 104. SPECIAL ENROLLMENT PERIODS.**

7       In the case of a participant, beneficiary or family  
8       member who—

9               (1) through marriage, separation, divorce,  
10       death, birth or placement of a child for adoption, ex-  
11       periences a change in family composition affecting  
12       eligibility under a group health plan, individual  
13       health plan, or employee health benefit plan;

14              (2) experiences a change in employment status,  
15       as described in section 603(2) of the Employee Re-  
16       tirement Income Security Act of 1974 (29 U.S.C.  
17       1163(2)), that causes the loss of eligibility for cov-  
18       erage, other than COBRA continuation coverage  
19       under a group health plan, individual health plan, or  
20       employee health benefit plan; or

21              (3) experiences a loss of eligibility under a  
22       group health plan, individual health plan, or em-  
23       ployee health benefit plan because of a change in the  
24       employment status of a family member;



1 each employee health benefit plan and each group health  
2 plan shall provide for a special enrollment period extend-  
3 ing for a reasonable time after such event that would per-  
4 mit the participant to change the individual or family basis  
5 of coverage or to enroll in the plan if coverage would have  
6 been available to such individual, participant, or bene-  
7 ficiary but for failure to enroll during a previous enroll-  
8 ment period. Such a special enrollment period shall ensure  
9 that a child born or placed for adoption shall be deemed  
10 to be covered under the plan as of the date of such birth  
11 or placement for adoption if such child is enrolled within  
12 30 days of the date of such birth or placement for adop-  
13 tion.

14 **SEC. 105. DISCLOSURE OF INFORMATION.**

15 (a) DISCLOSURE OF INFORMATION BY HEALTH PLAN  
16 ISSUER.—

17 (1) IN GENERAL.—In connection with the offer-  
18 ing of any group health plan to a small employer (as  
19 defined under applicable State law, or if not so de-  
20 fined, an employer with not more than 50 employ-  
21 ees), a health plan issuer shall make a reasonable  
22 disclosure to such employer, as part of its sollicita-  
23 tion and sales materials, of—

24 (A) the provisions of such group health  
25 plan concerning the health plan issuer's right to

1 change premium rates and the factors that may  
2 affect changes in premium rates.

3 (B) the provisions of such group health  
4 plan relating to renewability of coverage;

5 (C) the provisions of such group health  
6 plan relating to any preexisting condition provi-  
7 sion; and

8 (D) descriptive information about the ben-  
9 efits and premiums available under all group  
10 health plans for which the employer is qualified.

11 Information shall be provided to small employers  
12 under this paragraph in a manner determined to be  
13 understandable by the average small employer, and  
14 shall be sufficiently accurate and comprehensive to  
15 reasonably inform small employers, participants and  
16 beneficiaries of their rights and obligations under  
17 the group health plan.

18 (2) EXCEPTION.—With respect to the require-  
19 ment of paragraph (1), any information that is pro-  
20 prietary and trade secret information under applica-  
21 ble law shall not be subject to the disclosure require-  
22 ments of such paragraph.

23 (3) CONSTRUCTION.—Nothing in this sub-  
24 section shall be construed to preempt State report-  
25 ing and disclosure requirements to the extent that

1 such requirements are not preempted under section  
2 514 of the Employee Retirement Income Security  
3 Act of 1974 (29 U.S.C. 1144).

4 (b) DISCLOSURE OF INFORMATION TO PARTICIPANTS  
5 AND BENEFICIARIES.—

6 (1) IN GENERAL.—Section 104(b)(1) of the  
7 Employee Retirement Income Security Act of 1974  
8 (29 U.S.C. 1024(b)(1)) is amended in the matter  
9 following subparagraph (B)—

10 (A) by striking “102(a)(1),” and inserting  
11 “102(a)(1) that is not a material reduction in  
12 covered services or benefits provided,”; and

13 (B) by adding at the end thereof the fol-  
14 lowing new sentences: “If there is a modifica-  
15 tion or change described in section 102(a)(1)  
16 that is a material reduction in covered services  
17 or benefits provided, a summary description of  
18 such modification or change shall be furnished  
19 to participants not later than 60 days after the  
20 date of the adoption of the modification or  
21 change. In the alternative, the plan sponsors  
22 may provide such description at regular inter-  
23 vals of not more than 90 days. The Secretary  
24 shall issue regulations within 180 days after the  
25 date of enactment of the Health Insurance Re-

1 form Act of 1996, providing alternative mecha-  
2 nisms to delivery by mail through which em-  
3 ployee health benefit plans may notify partici-  
4 pants of material reductions in covered services  
5 or benefits.”.

6 (2) PLAN DESCRIPTION AND SUMMARY.—Sec-  
7 tion 102(b) of the Employee Retirement Income Se-  
8 curity Act of 1974 (29 U.S.C. 1022(b)) is amend-  
9 ed—

10 (A) by inserting “including the office or  
11 title of the individual who is responsible for ap-  
12 proving or denying claims for coverage of bene-  
13 fits” after “type of administration of the plan”;

14 (B) by inserting “including the name of  
15 the organization responsible for financing  
16 claims” after “source of financing of the plan”;  
17 and

18 (C) by inserting “including the office, con-  
19 tact, or title of the individual at the Depart-  
20 ment of Labor through which participants may  
21 seek assistance or information regarding their  
22 rights under this Act and title I of the Health  
23 Insurance Reform Act of 1996 with respect to  
24 health benefits that are not offered through a

1 group health plan.” after “benefits under the  
2 plan”.

3 **Subtitle B—Individual Market Rules**

4 **SEC. 110. INDIVIDUAL HEALTH PLAN PORTABILITY.**

5 (a) LIMITATION ON REQUIREMENTS.—

6 (1) IN GENERAL.—Except as provided in sub-  
7 sections (b) and (c), a health plan issuer described  
8 in paragraph (3) may not, with respect to an eligible  
9 individual (as defined in subsection (b)) desiring to  
10 enroll in an individual health plan—

11 (A) decline to offer coverage to such indi-  
12 vidual, or deny enrollment to such individual  
13 based on the health status of the individual; or

14 (B) impose a limitation or exclusion of  
15 benefits otherwise covered under the plan for  
16 the individual based on a preexisting condition  
17 unless such limitation or exclusion could have  
18 been imposed if the individual remained covered  
19 under a group health plan or employee health  
20 benefit plan (including providing credit for pre-  
21 vious coverage in the manner provided under  
22 subtitle A).

23 (2) HEALTH PROMOTION AND DISEASE PRE-  
24 VENTION.—Nothing in this subsection shall be con-  
25 strued to prevent a health plan issuer offering an in-

dividual health plan from establishing premium discounts or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion or disease prevention.

(3) HEALTH PLAN ISSUER.—A health plan issuer described in this paragraph in a health plan issuer that issues or renews individual health plans.

(4) PREMIUMS.—Nothing in this subsection shall be construed to affect the determination of a health plan issuer as to the amount of the premium payable under an individual health plan under applicable State law.

(b) DEFINITION OF ELIGIBLE INDIVIDUAL.—As used in subsection (a)(1), the term “eligible individual” means an individual who—

(1) was a participant or beneficiary enrolled under one or more group health plans, employee health benefit plans, or public plans established under Federal or State law, for not less than 18 months (without a lapse in coverage of more than 30 consecutive days) immediately prior to the date on which the individual desired to enroll in the individual health plan.

(2) is not eligible for coverage under a group health plan or an employee health benefit plan;

1           (3) has not had coverage terminated under a  
2           group health plan or employee health benefit plan  
3           for failure to make required premium payments or  
4           contributions, or for fraud or misrepresentation of  
5           material fact; and

6           (4) has, if applicable, accepted and exhausted  
7           the maximum required period of continuous coverage  
8           as described in section 602(2)(A) of the Employee  
9           Retirement Income Security Act of 1974 (29 U.S.C.  
10          1162(2)(A)) or under an equivalent State program.

11          (c) APPLICABLE OF CAPACITY LIMIT.—

12           (1) IN GENERAL.—Subject to paragraph (2), a  
13           health plan issuer offering coverage to individuals  
14           under an individual health plan may cease enrolling  
15           individuals under the plan if—

16                   (A) the health plan issuer ceases to enroll  
17                   any new individuals; and

18                   (B) the health plan issuer can demonstrate  
19                   to the applicable certifying authority (as defined  
20                   in section 142(d)), if required, that its financial  
21                   or provider capacity to serve previously covered  
22                   individuals will be impaired if the health plan  
23                   issuer is required to enroll additional individ-  
24                   uals.

1 Such a health plan issuer shall be prohibited from  
2 offering coverage after a cessation in offering cov-  
3 erage under this paragraph for a 6-month period or  
4 until the health plan issuer can demonstrate to the  
5 applicable certifying authority (as defined in section  
6 142(d)) that the health plan issuer has adequate ca-  
7 pacity, whichever is later.

8 (2) FIRST-COME-FIRST-SERVED.—A health plan  
9 issuer offering coverage to individuals under an indi-  
10 vidual health plan is only eligible to exercise the lim-  
11 itations provided for in paragraph (1) if the health  
12 plan issuer provides for enrollment of individuals  
13 under such plan on a first-come-first-served basis or  
14 other basis established by a State to ensure a fair  
15 opportunity to enroll in the plan and avoid risk se-  
16 lection.

17 (d) MARKET REQUIREMENT.—

18 (1) IN GENERAL.—The provisions of subsection  
19 (a) shall not be construed to require that a health  
20 plan issuer offering group health plans to group pur-  
21 chasers offer individual health plans to individuals.

22 (2) CONVERSION POLICIES.—A health plan is-  
23 suer offering group health plans to group purchasers  
24 under this title shall not be deemed to be a health  
25 plan issuer offering an individual health plan solely



1       because such health plan issuer offers a conversion  
2       policy.

3           (3) **MARKETING OF PLANS.**—Nothing in this  
4       section shall be construed to prevent a State from  
5       requiring health plan issuers offering coverage to in-  
6       dividuals under an individual health plan to actively  
7       market such plan.

8       **SEC. 111. GUARANTEED RENEWABILITY OF INDIVIDUAL**  
9                                   **HEALTH COVERAGE.**

10       (a) **IN GENERAL.**—Subject to subsections (b) and (c),  
11       coverage for individuals under an individual health plan  
12       shall be renewed or continued in force by a health plan  
13       issuer at the option of the individual, except that the re-  
14       quirement of this subsection shall not apply in the case  
15       of—

16           (1) the nonpayment of premiums or contribu-  
17       tions by the individual in accordance with the terms  
18       of the individual health plan or where the health  
19       plan issuer has not received timely premium pay-  
20       ments;

21           (2) fraud or misrepresentation of material fact  
22       on the part of the individual; or

23           (3) the termination of the individual health plan  
24       in accordance with subsection (b).

1       (b)   TERMINATION   OF   INDIVIDUAL   HEALTH  
2 PLANS.—

3           (1) PARTICULAR TYPE OF INDIVIDUAL HEALTH  
4 PLAN NOT OFFERED.—In any case in which a health  
5 plan issuer decides to discontinue offering a particu-  
6 lar type of individual health plan to individuals, an  
7 individual health plan may be discontinued by the  
8 health plan issuer only if—

9           (A) the health plan issuer provides notice  
10 to each individual covered under the plan of  
11 such discontinuation at least 90 days prior to  
12 the date of the expiration of the plan.

13          (B) the health plan issuer offers to each  
14 individual covered under the plan the option to  
15 purchase any other individual health plan cur-  
16 rently being offered by the health plan issuer to  
17 individuals; and

18          (C) in exercising the option to discontinue  
19 the individual health plan and in offering one or  
20 more replacement plans, the health plan issuer  
21 acts uniformly without regard to the health sta-  
22 tus of particular individuals.

23           (2) DISCONTINUANCE OF ALL INDIVIDUAL  
24 HEALTH PLANS.—In any case in which a health plan  
25 issuer elects to discontinue all individual health

1 plans in a State, an individual health plan may be  
2 discontinued by the health plan issuer only if—

3 (A) the health plan issuer provides notice  
4 to the applicable certifying authority (as defined  
5 in section 142(d)) and to each individual cov-  
6 ered under the plan of such discontinuation at  
7 least 180 days prior to the date of the dis-  
8 continuation of the plan; and

9 (B) all individual health plans issued or  
10 delivered for issuance in the State are discon-  
11 tinued and coverage under such plans is not re-  
12 newed.

13 (3) PROHIBITION ON MARKET REENTRY.—In  
14 the case of a discontinuation under paragraph (2),  
15 the health plan issuer may not provide for the issu-  
16 ance of any individual health plan in the State in-  
17 volved during the 5-year period beginning on the  
18 date of the discontinuation of the last plan not so  
19 renewed.

20 (c) TREATMENT OF NETWORK PLANS.—

21 (1) GEOGRAPHIC LIMITATIONS.—A health plan  
22 issuer which offers a network plan (as defined in  
23 paragraph (2)) may deny continued participation  
24 under the plan to individuals who neither live, re-  
25 side, nor work in an area in which the individual

1 health plan is offered, but only if such denial is ap-  
2 plied uniformly, without regard to health status of  
3 particular individuals.

4 (2) NETWORK PLAY.—As used in paragraph  
5 (1), the term “network plan” means an individual  
6 health plan that arranges for the financing and de-  
7 livery of health care services to individuals covered  
8 under such health plan, in whole or in part, through  
9 arrangements with providers.

10 **SEC. 112. STATE FLEXIBILITY IN INDIVIDUAL MARKET RE-**  
11 **FORMS.**

12 (a) IN GENERAL.—With respect to any State law  
13 with respect to which the Governor of the State notifies  
14 the Secretary of Health and Human Services that such  
15 State law will achieve the goals of sections 110 and 111,  
16 and that is in effect on, or enacted after, the date of enact-  
17 ment of this Act (such as laws providing for guaranteed  
18 issue, open enrollment by one or more health plan issuers,  
19 high-risk pools, or mandatory conversion policies), such  
20 State law shall apply in lieu of the standards described  
21 in sections 110 and 111 unless the Secretary of Health  
22 and Human Services determines, after considering the cri-  
23 teria described in subsection (b)(1), in consultation with  
24 the Governor and Insurance Commissioner or chief insur-  
25 ance regulatory official of the State, that such State law

1 does not achieve the goals of providing access to affordable  
2 health care coverage for those individuals described in sec-  
3 tions 110 and 111.

4 (b) DETERMINATION.—

5 (1) IN GENERAL.—In making a determination  
6 under subsection (a), the Secretary of Health and  
7 Human Services shall only—

8 (A) evaluate whether the State law or pro-  
9 gram provides guaranteed access to affordable  
10 coverage to individuals described in sections  
11 110 and 111;

12 (B) evaluate whether the State law or pro-  
13 gram provides coverage for preexisting condi-  
14 tions (as defined in section 103(e)) that were  
15 covered under the individuals' previous group  
16 health plan or employee health benefit plan for  
17 individuals described in sections 110 and 111.

18 (C) evaluate whether the State law or pro-  
19 gram provides individuals described in sections  
20 110 and 111 with a choice of health plans or  
21 a health plan providing comprehensive coverage,  
22 and

23 (D) evaluate whether the application of the  
24 standards described in sections 110 and 111  
25 will have an adverse impact on the number of

1 individuals in such State having access to af-  
2 fordable coverage.

3 (2) NOTICE OF INTENT.—If, within 6 months  
4 after the date of enactment of this Act, the Governor  
5 of a State notifies the Secretary of Health and  
6 Human Services that the State intends to enact a  
7 law, or modify an existing law, described in sub-  
8 section (a), the Secretary of Health and Human  
9 Services may not make a determination under such  
10 subsection until the expiration of the 12-month pe-  
11 riod beginning on the date on which such notifica-  
12 tion is made, or until January 1, 1998, whichever is  
13 later. With respect to a State that provides notice  
14 under this paragraph and that has a legislature that  
15 does not meet within the 12-month period beginning  
16 on the date of enactment of this Act, the Secretary  
17 shall not make a determination under subsection (a)  
18 prior to January 1, 1998.

19 (3) NOTICE TO STATE.—If the Secretary of  
20 Health and Human Services determines that a State  
21 law or program does not achieve the goals described  
22 in subsection (a), the Secretary of Health and  
23 Human Services shall provide the State with ade-  
24 quate notice and reasonable opportunity to modify

1 such law or program to achieve such goals prior to  
2 making a final determination under subsection (a).

3 (c) ADOPTION OF NAIC MODEL.—If, not later than  
4 9 months after the date of enactment of this Act—

5 (1) the National Association of Insurance Com-  
6 missioners (hereafter referred to as the “NAIC”),  
7 through a process which the Secretary of Health and  
8 Human Services determines has included consulta-  
9 tion with representatives of the insurance industry  
10 and consumer groups, adopts a model standard or  
11 standards for reform of the individual health insur-  
12 ance market, and

13 (2) the Secretary of Health and Human Serv-  
14 ices determines, within 30 days of the adoption of  
15 such NAIC standard or standards, that such stand-  
16 ards comply with the goals of sections 110 and 111  
17 a State that elects to adopt such model standards or sub-  
18 stantially adopt such model standards shall be deemed to  
19 have met the requirements of sections 110 and 111 and  
20 shall be subject to a determination under subsection (a).

21 **SEC. 113. DEFINITION.**

22 (a) IN GENERAL.—As used this title, the term “indi-  
23 vidual health plan” means any contract, policy, certificate  
24 or other arrangement offered to individuals by a health  
25 plan issuer that provides or pays for health benefits (such

1 as provider and hospital benefits) and that is not a group  
2 health plan under section 2(6).

3 (b) ARRANGEMENTS NOT INCLUDED.—Such term  
4 does not include the following, or any combination thereof:

5 (1) Coverage only for accident, or disability in-  
6 come insurance, or any combination thereof.

7 (2) Medicare supplemental health insurance (as  
8 defined under section 1882(g)(1) of the Social Secu-  
9 rity Act).

10 (3) Coverage issued as a supplement to liability  
11 insurance.

12 (4) Liability insurance, including general liabil-  
13 ity insurance and automobile liability insurance.

14 (5) Workers' compensation or similar insurance.

15 (6) Automobile medical payment insurance.

16 (7) Coverage for a specified disease or illness.

17 (8) Hospital of fixed indemnity insurance.

18 (9) Short-term limited duration insurance.

19 (10) Credit-only, dental-only, or vision-only in-  
20 surance.

21 (11) A health insurance policy providing  
22 benefits only for long-term care, nursing home  
23 care, home health care, community-based care,  
24 or any combination thereof.



1           **Subtitle C—COBRA Clarifications**

2   **SEC. 121. COBRA CLARIFICATIONS.**

3           (a) PUBLIC HEALTH SERVICE ACT.—

4               (1) PERIOD OF COVERAGE.—Section 2202(2) of  
5           the Public Health Service Act (42 U.S.C. 300bb–  
6           2(2)) is amended—

7               (A) in subparagraph (A)—

8                   (i) by transferring the sentence imme-  
9                   diately preceding clause (iv) so as to ap-  
10                  pear immediately following such clause  
11                  (iv); and

12                  (ii) in the last sentence (as so trans-  
13                  ferred)—

14                   (I) by inserting “, or a bene-  
15                   ficiary-family member of the individ-  
16                   ual,” after “an individual”; and

17                   (II) by striking “at the time of a  
18                   qualifying event described in section  
19                   2203(2)” and inserting “at any time  
20                   during the initial 18-month period of  
21                   continuing coverage under this title”;

22               (B) in subparagraph (D)(i), by inserting  
23               before “, or” the following: “, except that the  
24               exclusion or limitation contained in this clause  
25               shall not be considered to apply to a plan under

1 which a preexisting condition or exclusion does  
2 not apply to an individual otherwise eligible for  
3 continuation coverage under this section be-  
4 cause of the provision of the Health Insurance  
5 Reform Act of 1996”, and

6 (C) in subparagraph (E), by striking “at  
7 the time of a qualifying event described in sec-  
8 tion 2203(2)” and inserting “at any time dur-  
9 ing the initial 18-month period of continuing  
10 coverage under this title”,

11 (2) ELECTION.—Section 2205(1)(C) of the  
12 Public Health Service Act (42 U.S.C. 300bb-  
13 5(1)(C)) is amended—

14 (A) in clause (i), by striking “or” at the  
15 end thereof.

16 (B) in clause (ii), by striking the period  
17 and inserting “, or”, and

18 (C) by adding at the end thereof the fol-  
19 lowing new clause:

20 “(iii) in the case of an individual de-  
21 scribed in the last sentence of section  
22 2202(2)(A), or a beneficiary-family mem-  
23 ber of the individual, the date such individ-  
24 ual is determined to have been disabled.”.

1           (3) NOTICES.—Section 2206(3) of the Public  
 2       Health Service Act (42 U.S.C. 300bb–6(3)) is  
 3       amended by striking “at the time of a qualifying  
 4       event described in section 2203(2)” and inserting  
 5       “at any time during the initial 18-month period of  
 6       continuing coverage under this title”.

7           (4) BIRTH OR ADOPTION OF A CHILD.—Section  
 8       2208(3)(A) of the Public Health Service Act (42  
 9       U.S.C. 300bb–8(3)(A)) is amended by adding at the  
 10      end thereof the following new flush sentence:

11      “Such term shall also include a child who is born to or  
 12      placed for adoption with the covered employee during the  
 13      period of continued coverage under this title.”.

14      (b) EMPLOYEE RETIREMENT INCOME SECURITY ACT  
 15      OF 1974.—

16           (1) PERIOD OF COVERAGE.—Section 602(2) of  
 17      the Employee Retirement Income Security Act of  
 18      1974 (29 U.S.C. 1162(2)) is amended—

19           (A) in the last sentence of subparagraph  
 20      (A)—

21           (i) by inserting “, or a beneficiary-  
 22      family member of the individual.” after  
 23      “an individual”; and

24           (ii) by striking “at the time of a  
 25      qualifying event described in section

1           603(2)” and inserting “at any time during  
2           the initial 18-month period of continuing  
3           coverage under this part”,

4           (B) in subparagraph (D)(i), by inserting  
5           before, “, or” the following “, except that the  
6           exclusion or limitation contained in this clause  
7           shall not be considered to apply to a plan under  
8           which a preexisting condition or exclusion does  
9           not apply to an individual otherwise eligible for  
10          continuation coverage under this section be-  
11          cause of the provision of the Health Insurance  
12          Reform Act of 1996”; and

13          (C) in subparagraph (E), by striking “at  
14          the time of a qualifying event described in sec-  
15          tion 603(2)” and inserting “at any time during  
16          the initial 18-month period of continuing cov-  
17          erage under this part”.

18          (2) ELECTION.—Section 605(1)(C) of the Em-  
19          ployee Retirement Income Security Act of 1974 (29  
20          U.S.C. 1165(1)(C)) is amended—

21                 (A) in clause (i), by striking “or” at the  
22                 end thereof;

23                 (B) in clause (ii), by striking the period  
24                 and inserting “, or”; and

1 (C) by adding at the end thereof the fol-  
2 lowing new clause:

3 “(iii) in the case of an individual de-  
4 scribed in the last sentence of section  
5 602(2)(A), or a beneficiary-family member  
6 of the individual, the date such individual  
7 is determined to have been disabled.”.

8 (3) NOTICES.—Section 606(3) of the Employee  
9 Retirement Income Security Act of 1974 (29 U.S.C.  
10 1166(3)) is amended by striking “at the time of a  
11 qualifying event described in section 603(2)” and in-  
12 serting “at any time during the initial 18-month pe-  
13 riod of continuing coverage under this part”.

14 (4) BIRTH OR ADOPTION OF A CHILD.—Section  
15 607(3)(A) of the Employee Retirement Income Secu-  
16 rity Act of 1974 (29 U.S.C. 1167(3)) is amended by  
17 adding at the end thereof the following new flush  
18 sentence:

19 “Such term shall also include a child who is born to or  
20 placed for adoption with the covered employee during the  
21 period of continued coverage under this part.”.

22 (c) INTERNAL REVENUE CODE OF 1986.—

23 (1) PERIOD OF COVERAGE.—Section  
24 4980B(f)(2)(B) of the Internal Revenue Code of  
25 1986 is amended—

1 (A) in the last sentence of clause (i) by  
 2 striking “at the time of a qualifying event de-  
 3 scribed in paragraph (3)(B)” and inserting “at  
 4 any time during the initial 18-month period of  
 5 continuing coverage under this section”.

6 (B) in clause (iv)(I), by inserting before “,  
 7 or” the following: “, except that the exclusion  
 8 or limitation contained in this subclause shall  
 9 not be considered to apply to a plan under  
 10 which a preexisting condition or exclusion does  
 11 not apply to an individual otherwise eligible for  
 12 continuation coverage under this subsection be-  
 13 cause of the provision of the Health Insurance  
 14 Reform Act of 1996”; and

15 (C) in clause (v), by striking “at the time  
 16 of a qualifying event described in paragraph  
 17 (3)(B)” and inserting “at any time during the  
 18 initial 18-month period of continuing coverage  
 19 under this section”.

20 (2) ELECTION.—Section 4980B(f)(5)(A)(ii) of  
 21 the Internal Revenue Code of 1986 is amended—

22 (A) in subclause (I), by striking “or” at  
 23 the end thereof;

24 (B) in subclause (II), by striking the pe-  
 25 riod and inserting “, or”, and

1 (C) by adding at the end thereof the fol-  
2 lowing new subclause:

3 “(III) in the case of an qualified  
4 beneficiary described in the last sen-  
5 tence of paragraph (2)(B)(i), the date  
6 such individual is determined to have  
7 been disabled.”.

8 (3) NOTICES.—Section 4980B(f)(6)(C) of the  
9 Internal Revenue Code of 1986 is amended by strik-  
10 ing “at the time of a qualifying event described in  
11 paragraph (3)(B)” and inserting “at any time dur-  
12 ing the initial 18-month period of continuing cov-  
13 erage under this section”.

14 (4) BIRTH OR ADOPTION OF A CHILD.—Section  
15 4980B(g)(1)(A) of the Internal Revenue Code of  
16 1986 is amended by adding at the end thereof the  
17 following new flush sentence:

18 “Such term shall also include a child who is born to or  
19 placed for adoption with the covered employee during the  
20 period of continued coverage under this section.”.

21 (d) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to qualifying events occurring on  
23 or after the date of enactment of this Act for plan years  
24 beginning after December 31, 1997.

1 (e) NOTIFICATION OF CHANGES.—Not later than 60  
 2 days prior to the date on which this section becomes effec-  
 3 tive, each group health plan (covered under title XXII of  
 4 the Public Health Service Act, part 6 of subtitle B of title  
 5 I of the Employee Retirement Income Security Act of  
 6 1974, and section 4980B(f) of the Internal Revenue Code  
 7 of 1986) shall notify each qualified beneficiary who has  
 8 elected continuation coverage under such title, part or sec-  
 9 tion of the amendments made by this section.

10 **Subtitle D—Private Health Plan Purchasing**  
 11 **Cooperatives**

12 **SEC. 131. PRIVATE HEALTH PLAN PURCHASING COOPERA-**  
 13 **TIVES.**

14 (a) DEFINITION.—As used in this title, the term  
 15 “health plan purchasing cooperative” means a group of  
 16 individuals or employers that, on a voluntary basis and  
 17 in accordance with this section, form a cooperative for the  
 18 purpose of purchasing individual health plans or group  
 19 health plans offered by health plan issuers. A health plan  
 20 issuer, agent, broker or any other individual or entity en-  
 21 gaged in the sale of insurance may not underwrite a coop-  
 22 erative.

23 (b) CERTIFICATION.—

24 (1) IN GENERAL.—If a group described in sub-  
 25 section (a) desires to form a health plan purchasing



1 cooperative in accordance with this section and such  
2 group appropriately notifies the State and the Sec-  
3 retary of such desire, the State, upon a determina-  
4 tion that such group meets the requirements of this  
5 section, shall certify the group as a health plan pur-  
6 chasing cooperative. The State shall make a deter-  
7 mination of whether such group meets the require-  
8 ments of this section in a timely fashion. Each such  
9 cooperative shall also be registered with the Sec-  
10 retary.

11 (2) STATE REFUSAL TO CERTIFY.—If a State  
12 fails to implement a program for certifying health  
13 plan purchasing cooperatives in accordance with the  
14 standards under this title, the Secretary shall certify  
15 and oversee the operations of such cooperative in  
16 such State.

17 (3) INTERSTATE COOPERATIVES.—For purposes  
18 of this section a health plan purchasing cooperative  
19 operating in more than one State shall be certified  
20 by the State in which the cooperative is domiciled.  
21 States may enter into cooperative agreements for the  
22 purpose of certifying and overseeing the operation of  
23 such cooperatives. For purposes of this subsection, a  
24 cooperative shall be considered to be domiciled in the

1 State in which most of the members of the coopera-  
2 tive reside.

3 (c) BOARD OF DIRECTORS.—

4 (1) IN GENERAL.—Each health plan purchasing  
5 cooperative shall be governed by a Board of Direc-  
6 tors that shall be responsible for ensuring the per-  
7 formance of the duties of the cooperative under this  
8 section. The Board shall be composed of a board  
9 cross-section of representatives of employers, em-  
10 ployees, and individuals participating in the coopera-  
11 tive. A health plan issuer, agent, broker or any other  
12 individual or entity engaged in the sale of individual  
13 health plans or group health plans may not hold or  
14 control any right to vote with respect to a coopera-  
15 tive.

16 (2) LIMITATION ON COMPENSATION.—A health  
17 plan purchasing cooperative may not provide com-  
18 pensation to members of the Board of Directors.  
19 The cooperative may provide reimbursements to  
20 such members for the reasonable and necessary ex-  
21 penses incurred by the members in the performance  
22 of their duties as members of the Board.

23 (3) CONFLICT OF INTEREST.—No member of  
24 the Board of Directors (or family members of such  
25 members) nor any management personnel of the co-

operative may be employed by, be a consultant of, be a member of the board of directors or, be affiliated with an agent of, or otherwise be a representative of any health plan issuer, health care provider, or agent or broker. Nothing in the preceding sentence shall limit a member of the Board from purchasing coverage offered through the cooperative.

(d) MEMBERSHIP AND MARKETING AREA.—

(1) MEMBERSHIP.—A health plan purchasing cooperative may establish limits on the maximum size of employers who may become members of the cooperative, and may determine whether to permit individuals to become members. Upon the establishment of such membership requirements, the cooperative shall, except as provided in subparagraph (B), accept all employers (or individuals) residing within the area served by the cooperative who meet such requirements as members on a first-come, first-served basis, or on another basis established by the State to ensure equitable access to the cooperative.

(2) MARKETING AREA.—A State may establish rules regarding the geographic area that must be served by a health plan purchasing cooperative. With respect to a State that has not established such rules, a health plan purchasing cooperative operating

1 in the State shall define the boundaries of the area  
2 to be served by the cooperative, except that such  
3 boundaries may not be established on the basis of  
4 health status of the populations that reside in the  
5 area.

6 (e) DUTIES AND RESPONSIBILITIES.—

7 (1) IN GENERAL.—A health plan purchasing co-  
8 operative shall—

9 (A) enter into agreements with multiple,  
10 unaffiliated health plan issuers, except that the  
11 requirement of this subparagraph shall not  
12 apply in regions (such as remote or frontier  
13 areas) in which compliance with such require-  
14 ment is not possible.

15 (B) enter into agreements with employers  
16 and individuals who become members of the co-  
17 operative;

18 (C) participate in any program of risk-ad-  
19 justment or reinsurance, or any similar pro-  
20 gram, that is established by the State.

21 (D) prepare and disseminate comparative  
22 health plan materials (including information  
23 about cost, quality, benefits, and other informa-  
24 tion concerning group health plans and individ-

1           ual health plans offered through the coopera-  
2           tive);

3           (E) actively market to all eligible employ-  
4           ers and individuals residing within the service  
5           area; and

6           (F) act as an ombudsman for group health  
7           plan or individual health plan enrollees.

8           (2) PERMISSIBLE ACTIVITIES.—A health plan  
9           purchasing cooperative may perform such other  
10          functions as necessary to further the purposes of  
11          this title, including—

12           (A) collecting and distributing premiums  
13           and performing other administrative functions;

14           (B) collecting and analyzing surveys of en-  
15           rollee satisfaction;

16           (C) charging membership fee to enrollees  
17           (such fees may not be based on health status)  
18           and charging participation fees to health plan  
19           issuers;

20           (D) cooperating with (or accepting as  
21           members) employers who provide health bene-  
22           fits directly to participants and beneficiaries  
23           only for the purpose of negotiating with provid-  
24           ers, and

1 (E) negotiating with health care providers  
2 and health plan issuers.

3 (f) LIMITATIONS ON COOPERATIVE ACTIVITIES.—A  
4 health plan purchasing cooperative shall not—

5 (1) perform any activity relating to the licens-  
6 ing of health plan issuers.

7 (2) assume financial risk directly or indirectly  
8 on behalf of members of a health plan purchasing  
9 cooperative relating to any group health plan or in-  
10 dividual health plan;

11 (3) establish eligibility, continuation of eligi-  
12 bility, enrollment, or premium contribution require-  
13 ments for participants, beneficiaries, or individuals  
14 based on health status;

15 (4) operate on a for-profit or other basis where  
16 the legal structure of the cooperative permits profits  
17 to be made and not returned to the members of the  
18 cooperative, except that a for-profit health plan pur-  
19 chasing cooperative may be formed by a nonprofit  
20 organization—

21 (A) in which membership in such organiza-  
22 tion is not based on health status; and

23 (B) that accepts as members all employers  
24 or individuals on a first-come, first-served basis,  
25 subject to any established limit on the maxi-

1           mum size of and employer that may become a  
2           member; or

3           (5) perform any other activities that conflict or  
4           are inconsistent with the performance of its duties  
5           under this title.

6           (g) LIMITED PREEMPTIONS OF CERTAIN STATE  
7           LAWS.—

8           (1) IN GENERAL.—With respect to a health  
9           plan purchasing cooperative that meets the require-  
10          ments of this section, State fictitious group laws  
11          shall be preempted.

12          (2) HEALTH PLAN ISSUERS.—

13               (A) RATING.—With respect to a health  
14               plan issuer offering a group health plan or indi-  
15               vidual health plan through a health plan pur-  
16               chasing cooperative that meets the requirements  
17               of this section. State premium rating require-  
18               ment laws, except to the extent provided under  
19               subparagraph (B), shall be preempted unless  
20               such laws permit premium rates negotiated by  
21               the cooperative to be less than rates that would  
22               otherwise be permitted under State law, if such  
23               rating differential is not based on differences in  
24               health status or demographic factors.

1 (B) EXCEPTION.—State laws referred to in  
2 subparagraph (A) shall not be preempted if  
3 such laws—

4 (i) prohibit the variance of premium  
5 rates among employers, plan sponsors, or  
6 individuals that are members of health  
7 plan purchasing cooperative in excess of  
8 the amount of such variations that would  
9 be permitted under such State rating laws  
10 among employers, plan sponsors, and indi-  
11 viduals that are not members of the coop-  
12 erative; and

13 (ii) prohibit a percentage increase in  
14 premium rates for a new rating period that  
15 is in excess of that which would be per-  
16 mitted under State rating laws.

17 (C) BENEFITS.—Except as provided in  
18 subparagraph (D), a health plan issuer offering  
19 a group health plan or individual health plan  
20 through a health plan purchasing cooperative  
21 shall comply with all State mandated benefit  
22 laws that require the offering of any services,  
23 category or care, or services of any class or type  
24 of provider.



1           (D) EXCEPTION.—In those states that  
2           have enacted laws authorizing the issuance of  
3           alternative benefit plans to small employers,  
4           health plan issuers may offer such alternative  
5           benefit plans through a health plan purchasing  
6           cooperative that meets the requirements of this  
7           section.

8           (h) RULES OF CONSTRUCTION.—Nothing in this sec-  
9           tion shall be construed to—

10           (1) require that a State organize, operate, or  
11           otherwise create health plan purchasing cooperatives;

12           (2) otherwise require the establishment of  
13           health plan purchasing cooperatives.

14           (3) require individuals, plan sponsors, or em-  
15           ployers to purchase group health plans or individual  
16           health plans through a health plan purchasing coop-  
17           erative;

18           (4) require that a health plan purchasing coop-  
19           erative be the only type of purchasing arrangement  
20           permitted to operate in a State.

21           (5) confer authority upon a State that the State  
22           would not otherwise have to regulate health plan is-  
23           suers or employee health benefits plans, or

24           (6) confer authority up a State (or the Federal  
25           Government) that the State (or Federal Govern-

1       ment) would not otherwise have to regulate group  
 2       purchasing arrangements, coalitions, or other similar  
 3       entities that do not desire to become a health plan  
 4       purchasing cooperative in accordance with this sec-  
 5       tion.

6       (i) APPLICATION OF ERISA.—For purposes of en-  
 7       forcement only, the requirements of parts 4 and 5 of sub-  
 8       title B of title I of the Employee Retirement Income Secu-  
 9       rity Act of 1974 (29 U.S.C. 1101) shall apply to a health  
 10      plan purchasing cooperative as if such plan were an em-  
 11      ployee welfare benefit plan.

12           **Subtitle E—Application and Enforcement of**  
 13                           **Standards**

14   **SEC. 141. APPLICABILITY.**

15       (a) CONSTRUCTION.—

16           (1) ENFORCEMENT.—

17                   (A) IN GENERAL.—A requirement or  
 18                   standard imposed under this title on a group  
 19                   health plan or individual health plan offered by  
 20                   a health plan issuer shall be deemed to be a re-  
 21                   quirement or standard imposed on the health  
 22                   plan issuer. Such requirements or standards  
 23                   shall be enforced by the State insurance com-  
 24                   missioner for the State involved or the official  
 25                   or officials designated by the State to enforce

1 the requirements of this title. In the case of a  
2 group health plan offered by a health plan is-  
3 suer in connection with an employee health ben-  
4 efit plan, the requirements of standards im-  
5 posed under the title shall be enforced with re-  
6 spect to the health plan issuer by the State in-  
7 surance commissioner for the State involved or  
8 the official of officials designated by the State  
9 to enforce the requirements of this title.

10 (B) LIMITATION.—Except as provided in  
11 subsection (c), the Secretary shall not enforce  
12 the requirements or standards of this title as  
13 they relate to health plan issuers, group health  
14 plans, or individual health plans. In no case  
15 shall a State enforce the requirements or stand-  
16 ards of this title as they relate to employee  
17 health benefit plans.

18 (2) PREEMPTION OF STATE LAW.—Nothing in  
19 this title shall be construed to prevent a State from  
20 establishing, implementing, or continuing in effect  
21 standards and requirements—

22 (A) not prescribed in this title; or

23 (B) related to the issuance, renewal, or  
24 portability of health insurance or the establish-  
25 ment or operation of group purchasing arrange-

1           ments, that are consistent with, and are not in  
2           direct conflict with, this title and provide great-  
3           er protection or benefit to participants, bene-  
4           ficiaries or individuals.

5           (b) RULE OF CONSTRUCTION.—Nothing in this title  
6           shall be construed to affect or modify the provisions of  
7           section 514 of the Employee Retirement Income Security  
8           Act of 1974 (29 U.S.C. 1144).

9           (c) CONTINUATION.—Nothing in this title shall be  
10          construed as requiring a group health plan or an employee  
11          health benefit plan to provide benefits to a particular par-  
12          ticipant or beneficiary in excess of those provided under  
13          the terms of such plan.

14       **SEC. 202. ENFORCEMENT OF STANDARDS.**

15          (a) HEALTH PLAN ISSUERS.—Each State shall re-  
16          quire that each group health plan and individual health  
17          plan issued, sold, renewed, offered for sale or operated in  
18          such State by a health plan issuer meet the standards es-  
19          tablished under this title pursuant to an enforcement plan  
20          filed by the State with the Secretary. A State shall submit  
21          such information as required by the Secretary demonstrat-  
22          ing effective implementation of the State enforcement law.

23          (b) EMPLOYEE HEALTH BENEFIT PLANS.—With re-  
24          spect to employee health benefit plans, the Secretary shall  
25          enforce the reform standards established under this title

1 in the same manner as provided for under sections 502,  
2 504, 506, and 510 of the Employee Retirement Income  
3 Security Act of 1974 (29 U.S.C. 1132, 1134, 1136, and  
4 1140). The civil penalties contained in paragraphs (1) and  
5 (2) of section 502(c) of such Act (29 U.S.C. 1132(c) (1)  
6 and (2)) shall apply to any information required by the  
7 Secretary to be disclosed and reported under this section.

8 (c) FAILURE TO IMPLEMENT PLAN.—In the case of  
9 the failure of a State to substantially enforce the stand-  
10 ards and requirements set forth in this title with respect  
11 to group health plans and individual health plans as pro-  
12 vided for under the State enforcement plan filed under  
13 subsection (a), the Secretary, in consultation with the Sec-  
14 retary of Health and Human Services, shall implement an  
15 enforcement plan meeting the standards of this title in  
16 such State. In the case of a State that fails to substan-  
17 tially enforce the standards and requirements set forth in  
18 this title, each health plan issuer operating in such State  
19 shall be subject to civil enforcement as provided for under  
20 sections 502, 504, 506, and 510 of the Employee Retire-  
21 ment Income Security Act of 1974 (29 U.S.C. 1132, 1134,  
22 1136, and 1140). The civil penalties contained in para-  
23 graphs (1) and (2) of section 502(c) of such Act (29  
24 U.S.C. 1132(c) (1) and (2)) shall apply to any information

1 required by the Secretary to be disclosed and reported  
2 under this section.

3 (d) APPLICABLE CERTIFYING AUTHORITY.—As used  
4 in this title, the term “applicable certifying  
5 authority” means, with respect to—

6 (1) health plan issuers, the State insurance  
7 commissioner or official or officials designated by  
8 the State to enforce the requirements of this title for  
9 the State involved; and

10 (2) an employee health benefit, plan, the Sec-  
11 retary.

12 (e) REGULATIONS.—The Secretary may promulgate  
13 such regulations as may be necessary or appropriate to  
14 carry out this title.

15 (f) TECHNICAL AMENDMENT.—Section 508 of the  
16 Employee Retirement Income Security Act of 1974 (29  
17 U.S.C. 1138) is amended by inserting “and under the  
18 Health Insurance Reform Act of 1996” before the period.

19 **Subtitle F—Miscellaneous Provisions**

20 **SEC. 191. HEALTH COVERAGE AVAILABILITY STUDY.**

21 (a) IN GENERAL.—The Secretary of Health and  
22 Human Services, in consultation with the Secretary, rep-  
23 resentatives of State officials, consumers, and other rep-  
24 resentatives of individuals and entities that have expertise  
25 in health insurance and employee benefits, shall conclude

1 a two-part study, and prepare and submit reports, in ac-  
2 cordance with this section.

3 (b) EVALUATION OF AVAILABILITY.—Not later than  
4 January 1, 1998, the Secretary of Health and Human  
5 Services shall prepare and submit to the appropriate com-  
6 mittees of Congress a report, concerning—

7 (1) an evaluation, based on the experience of  
8 States, expert opinions, and such additional data as  
9 may be available, of the various mechanisms used to  
10 ensure the availability of reasonably priced health  
11 coverage to employers purchasing group coverage  
12 and to individuals purchasing coverage on a non-  
13 group basis; and

14 (2) whether standards that limit the variation  
15 in premiums will further the purposes of this Act.

16 (c) EVALUATION OF EFFECTIVENESS.—Not later  
17 than January 1, 1999, the Secretary of Health and  
18 Human Services shall prepare and submit to the appro-  
19 priate committees of Congress a report, concerning the ef-  
20 fectiveness of the provisions of this Act and the various  
21 State laws, in ensuring the availability of reasonably  
22 priced health coverage to employers purchasing group cov-  
23 erage and individuals purchasing coverage on a nongroup  
24 basis.

1 **SEC. 192. EFFECTIVE DATE.**

2 Except as otherwise provided for in this title, the pro-  
3 visions of this title shall apply as follows:

4 (1) With respect to group health plans and in-  
5 dividual health plans, such provisions shall apply to  
6 plans offered, sold, issued, renewed, in effect, or op-  
7 erated on or after January 1, 1997, and

8 (2) With respect to employee health benefit  
9 plans, on the first day of the first plan year begin-  
10 ning on or after January 1, 1997.

11 **SEC. 193. SEVERABILITY.**

12 If any provision of this title or the application of such  
13 provision to any person or circumstance is held to be un-  
14 constitutional, the remainder of this title and the applica-  
15 tion of the provisions of such to any person or cir-  
16 cumstance shall not be affected thereby.

17 **TITLE II—INCREASE IN DEDUCTION FOR**  
18 **HEALTH INSURANCE COSTS OF SELF-**  
19 **EMPLOYED INDIVIDUALS**

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TITLE II—INCREASE IN DEDUCTION FOR HEALTH INSURANCE  
COSTS OF SELF-EMPLOYED INDIVIDUALS

Sec. 200. Amendment of 1986 Code.

Subtitle A—Increase in Deduction For Health Insurance Costs of Self-  
Employed Individuals

Sec. 201. Increase in deduction for health insurance costs of self-employed indi-  
viduals.



## SUBTITLE B—REVENUE OFFSETS

## CHAPTER 1—TREATMENT OF INDIVIDUALS WHO EXPATRIATE

Sec. 211. Revision of tax rules on expatriation.

Sec. 212. Information on individuals expatriating.

## CHAPTER 2—FOREIGN TRUST TAX COMPLIANCE

Sec. 221. Improved information reporting on foreign trusts.

Sec. 222. Modifications of rules relating to foreign trusts having one or more United States beneficiary.

Sec. 223. Foreign persons not to be treated as owners under grantor trust rules.

Sec. 224. Information reporting regarding foreign gifts.

Sec. 225. Modification of rules relating to foreign trusts which are not grantor trusts.

Sec. 226. Residence of estates and trusts, etc.

## CHAPTER 3—REPEAL OF BAD DEBT RESERVE METHOD FOR THRIFT SAVINGS ASSOCIATIONS

Sec. 231. Repeal of bad debt reserve method for thrift savings associations.

1 **SEC. 200. AMENDMENT OF 1986 CODE.**

2 Except as otherwise expressly provided, whenever in  
3 this title an amendment or repeal is expressed in terms  
4 of an amendment to, or repeal of, a section or other provi-  
5 sion, the reference shall be considered to be made to a  
6 section or other provision of the Internal Revenue Code  
7 of 1986.

8 **Subtitle A—Increase in Deduction For Health**  
9 **Insurance Costs of Self-Employed Individuals**10 **SEC. 201. INCREASE IN DEDUCTION FOR HEALTH INSUR-**  
11 **ANCE COSTS OF SELF-EMPLOYED INDIVID-**  
12 **UALS.**

13 (a) IN GENERAL.—Paragraph (1) of section 162(l)  
14 is amended to read as follows:

15 “(1) ALLOWANCE OF DEDUCTION.—

1           “(A) IN GENERAL.—In the case of an indi-  
 2           vidual who is an employee within the meaning  
 3           of section 401(c)(1), there shall be allowed as  
 4           a deduction under this section an amount equal  
 5           to the applicable percentage of the amount paid  
 6           during the taxable year for insurance which  
 7           constitutes medical care for the taxpayer, his  
 8           spouse, and dependents.

9           “(B) APPLICABLE PERCENTAGE.—For  
 10          purposes of subparagraph (A), the applicable  
 11          percentage shall be determined under the fol-  
 12          lowing table:

<b>“For taxable years beginning   The applicable percentage is— in calendar year—</b>	
After 1996 and before 2002 .....	50 percent.
2002 or thereafter .....	80 percent.”

13          (b) EFFECTIVE DATE.—The amendment made by  
 14          this section shall apply to taxable years beginning after  
 15          December 31, 1996.

16                   **Subtitle B—Revenue Offsets**  
 17                   **CHAPTER 1—TREATMENT OF**  
 18                   **INDIVIDUALS WHO EXPATRIATE**

19          **SEC. 211. REVISION OF TAX RULES ON EXPATRIATION.**

20          (a) IN GENERAL.—Subpart A of part II of sub-  
 21          chapter N of chapter 1 is amended by inserting after sec-  
 22          tion 877 the following new section:

1 **“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

2 “(a) GENERAL RULES.—For purposes of this sub-  
3 title—

4 “(1) MARK TO MARKET.—Except as provided in  
5 subsection (f), all property of a covered expatriate to  
6 which this section applies shall be treated as sold on  
7 the expatriation date for its fair market value.

8 “(2) RECOGNITION OF GAIN OR LOSS.—In the  
9 case of any sale under paragraph (1)—

10 “(A) notwithstanding any other provision  
11 of this title, any gain arising from such sale  
12 shall be taken into account for the taxable year  
13 of the sale unless such gain is excluded from  
14 gross income under part III of subchapter B,  
15 and

16 “(B) any loss arising from such sale shall  
17 be taken into account for the taxable year of  
18 the sale to the extent otherwise provided by this  
19 title, except that section 1091 shall not apply  
20 (and section 1092 shall apply) to any such loss.

21 “(3) EXCLUSION FOR CERTAIN GAIN.—The  
22 amount which would (but for this paragraph) be in-  
23 cludible in the gross income of any individual by rea-  
24 son of this section shall be reduced (but not below  
25 zero) by \$600,000. For purposes of this paragraph,  
26 allocable expatriation gain taken into account under

1 subsection (f)(2) shall be treated in the same man-  
2 ner as an amount required to be includible in gross  
3 income.

4 “(4) ELECTION TO CONTINUE TO BE TAXED AS  
5 UNITED STATES CITIZEN.—

6 “(A) IN GENERAL.—If an expatriate elects  
7 the application of this paragraph—

8 “(i) this section (other than this para-  
9 graph) shall not apply to the expatriate,  
10 but

11 “(ii) the expatriate shall be subject to  
12 tax under this title, with respect to prop-  
13 erty to which this section would apply but  
14 for such election, in the same manner as if  
15 the individual were a United States citizen.

16 “(B) LIMITATION ON AMOUNT OF ESTATE,  
17 GIFT, AND GENERATION-SKIPPING TRANSFER  
18 TAXES.—The aggregate amount of taxes im-  
19 posed under subtitle B with respect to any  
20 transfer of property by reason of an election  
21 under subparagraph (A) shall not exceed the  
22 amount of income tax which would be due if the  
23 property were sold for its fair market value im-  
24 mediately before the time of the transfer or

1 death (taking into account the rules of para-  
2 graph (2)).

3 “(C) REQUIREMENTS.—Subparagraph (A)  
4 shall not apply to an individual unless the indi-  
5 vidual—

6 “(i) provides security for payment of  
7 tax in such form and manner, and in such  
8 amount, as the Secretary may require,

9 “(ii) consents to the waiver of any  
10 right of the individual under any treaty of  
11 the United States which would preclude as-  
12 sessment or collection of any tax which  
13 may be imposed by reason of this para-  
14 graph, and

15 “(iii) complies with such other re-  
16 quirements as the Secretary may prescribe.

17 “(D) ELECTION.—An election under sub-  
18 paragraph (A) shall apply to all property to  
19 which this section would apply but for the elec-  
20 tion and, once made, shall be irrevocable. Such  
21 election shall also apply to property the basis of  
22 which is determined in whole or in part by ref-  
23 erence to the property with respect to which the  
24 election was made.

25 “(b) ELECTION TO DEFER TAX.—

1           “(1) IN GENERAL.—If the taxpayer elects the  
2           application of this subsection with respect to any  
3           property—

4                   “(A) no amount shall be required to be in-  
5                   cluded in gross income under subsection (a)(1)  
6                   with respect to the gain for such property for  
7                   the taxable year of the sale, but

8                   “(B) the taxpayer’s tax for the taxable  
9                   year in which such property is disposed of shall  
10                  be increased by the deferred tax amount with  
11                  respect to the property.

12          Except to the extent provided in regulations, sub-  
13          paragraph (B) shall apply to a disposition whether  
14          or not gain or loss is recognized in whole or in part  
15          on the disposition.

16          “(2) DEFERRED TAX AMOUNT.—

17                   “(A) IN GENERAL.—For purposes of para-  
18                   graph (1), the term ‘deferred tax amount’  
19                   means, with respect to any property, an amount  
20                   equal to the sum of—

21                           “(i) the difference between the  
22                           amount of tax paid for the taxable year de-  
23                           scribed in paragraph (1)(A) and the  
24                           amount which would have been paid for  
25                           such taxable year if the election under

1 paragraph (1) had not applied to such  
2 property, plus

3 “(ii) an amount of interest on the  
4 amount described in clause (i) determined  
5 for the period—

6 “(I) beginning on the 91st day  
7 after the expatriation date, and

8 “(II) ending on the due date for  
9 the taxable year described in para-  
10 graph (1)(B),

11 by using the rates and method applicable  
12 under section 6621 for underpayments of  
13 tax for such period.

14 For purposes of clause (ii), the due date is the  
15 date prescribed by law (determined without re-  
16 gard to extension) for filing the return of the  
17 tax imposed by this chapter for the taxable  
18 year.

19 “(B) ALLOCATION OF LOSSES.—For pur-  
20 poses of subparagraph (A), any losses described  
21 in subsection (a)(2)(B) shall be allocated rat-  
22 ably among the gains described in subsection  
23 (a)(2)(A).

24 “(3) SECURITY.—

1           “(A) IN GENERAL.—No election may be  
2           made under paragraph (1) with respect to any  
3           property unless adequate security is provided  
4           with respect to such property.

5           “(B) ADEQUATE SECURITY.—For purposes  
6           of subparagraph (A), security with respect to  
7           any property shall be treated as adequate secu-  
8           rity if—

9                   “(i) it is a bond in an amount equal  
10                  to the deferred tax amount under para-  
11                  graph (2)(A) for the property, or

12                  “(ii) the taxpayer otherwise estab-  
13                  lishes to the satisfaction of the Secretary  
14                  that the security is adequate.

15           “(4) WAIVER OF CERTAIN RIGHTS.—No elec-  
16           tion may be made under paragraph (1) unless the  
17           taxpayer consents to the waiver of any right under  
18           any treaty of the United States which would pre-  
19           clude assessment or collection of any tax imposed by  
20           reason of this section.

21           “(5) DISPOSITIONS.—For purposes of this sub-  
22           section, a taxpayer making an election under this  
23           subsection with respect to any property shall be  
24           treated as having disposed of such property—



1           “(A) immediately before death if such  
2           property is held at such time, and

3           “(B) at any time the security provided  
4           with respect to the property fails to meet the  
5           requirements of paragraph (3) and the taxpayer  
6           does not correct such failure within the time  
7           specified by the Secretary.

8           “(6) ELECTIONS.—An election under  
9           paragraph (1) shall only apply to property  
10          described in the election and, once made, is  
11          irrevocable. An election may be under  
12          paragraph (1) with respect to an interest  
13          in a trust with respect to which gain is re-  
14          quired to be recognized under subsection  
15          (f)(1).

16          “(c) COVERED EXPATRIATE.—For purposes of this  
17          section—

18               “(1) IN GENERAL.—The term ‘covered expatri-  
19          ate’ means an expatriate—

20               “(A) whose average annual net income tax  
21               (as defined in section 38(c)(1)) for the period  
22               of 5 taxable years ending before the expatria-  
23               tion date is greater than \$100,000, or

24               “(B) whose net worth as of such date is  
25               \$500,000 or more.

1 If the expatriation date is after 1996, such  
2 \$100,000 and \$500,000 amounts shall be increased  
3 by an amount equal to such dollar amount multi-  
4 plied by the cost-of-living adjustment determined  
5 under section 1(f)(3) for such calendar year by sub-  
6 stituting ‘1995’ for ‘1992’ in subparagraph (B)  
7 thereof. Any increase under the preceding sentence  
8 shall be rounded to the nearest multiple of \$1,000.

9 “(2) EXCEPTIONS.—An individual shall not be  
10 treated as a covered expatriate if—

11 “(A) the individual—

12 “(i) became at birth a citizen of the  
13 United States and a citizen of another  
14 country and, as of the expatriation date,  
15 continues to be a citizen of, and is taxed  
16 as a resident of, such other country, and

17 “(ii) has been a resident of the United  
18 Stats (as defined in section  
19 7701(b)(1)(A)(ii)) for not more than 8 tax-  
20 able years during the 15-taxable year pe-  
21 riod ending with the taxable year during  
22 which the expatriation date occurs, or

23 “(B)(i) the individual’s relinquishment of  
24 United States citizenship occurs before such in-  
25 dividual attains age 18½, and

1           “(ii) the individual has been a resident of  
2           the United States (as so defined) for not more  
3           than 5 taxable years before the date of relin-  
4           quishment.

5           “(d) PROPERTY TO WHICH SECTION APPLIES.—For  
6 purposes of this section—

7           “(1) IN GENERAL.—Except as otherwise pro-  
8           vided by the Secretary, this section shall apply to—

9           “(A) any interest in property held by a  
10          covered expatriate on the expatriation date the  
11          gain from which would be included in the gross  
12          income of the expatriate if such interest had  
13          been sold for its fair market value on such date  
14          in a transaction in which gain is recognized in  
15          whole or in part, and

16          “(B) any other interest in a trust to which  
17          subsection (f) applies.

18          “(2) EXCEPTIONS.—This section shall not  
19          apply to the following property:

20          “(A) UNITED STATES REAL PROPERTY IN-  
21          TERESTS.—Any United States real property in-  
22          terest (as defined in section 897(c)(1)), other  
23          than stock of a United States real property  
24          holding corporation which does not, on the ex-

1 patriation date, meet the requirements of sec-  
2 tion 897(c)(2).

3 “(B) INTEREST IN CERTAIN RETIREMENT  
4 PLANS.—

5 “(i) IN GENERAL.—Any interest in a  
6 qualified retirement plan (as defined in  
7 section 4974(c)), other than any interest  
8 attributable to contributions which are in  
9 excess of any limitation or which violate  
10 any condition for tax-favored treatment.

11 “(ii) FOREIGN PENSION PLANS.—

12 “(I) IN GENERAL.—Under regu-  
13 lations prescribed by the Secretary,  
14 interests in foreign pension plans or  
15 similar retirement arrangements or  
16 programs.

17 “(II) LIMITATION.—The value of  
18 property which is treated as not sold  
19 by reason of this subparagraph shall  
20 not exceed \$500,000.

21 “(e) DEFINITIONS.—For purposes of this section—

22 “(1) EXPATRIATE.—The term ‘expatriate’  
23 means—

24 “(A) any United States citizen who relin-  
25 quishes his citizenship, or

1 “(B) any long-term resident of the United  
2 States who—

3 “(i) ceases to be a lawful permanent  
4 resident of the United States (within the  
5 meaning of section 7701(b)(6)), or

6 “(ii) commences to be treated as a  
7 resident of a foreign country under the  
8 provisions of a tax treaty between the  
9 United States and the foreign country and  
10 who does not waive the benefits of such  
11 treaty applicable to residents of the foreign  
12 country.

13 “(2) EXPATRIATION DATE.—The term ‘expa-  
14 triation date’ means—

15 “(A) the date an individual relinquishes  
16 United States citizenship, or

17 “(B) in the case of a long-term resident of  
18 the United States, the date of the event de-  
19 scribed in clause (i) or (ii) of paragraph (1)(B).

20 “(3) RELINQUISHMENT OF CITIZENSHIP.—A  
21 citizen shall be treated as relinquishing his United  
22 States citizenship on the earliest of—

23 “(A) the date the individual renounces his  
24 United States nationality before a diplomatic or  
25 consular officer of the United States pursuant

1 to paragraph (5) of section 349(a) of the Immi-  
2 gration and Nationality Act (8 U.S.C.  
3 1481(a)(5)).

4 “(B) the date the individual furnishes to  
5 the United States Department of State a signed  
6 statement of voluntary relinquishment of Unit-  
7 ed States nationality confirming the perform-  
8 ance of an act of expatriation specified in para-  
9 graph (1), (2), (3), or (4) of section 349(a) of  
10 the Immigration and Nationality Act (8 U.S.C.  
11 1481(a)(1)–(4)).

12 “(C) the date the United States Depart-  
13 ment of State issues to the individual a certifi-  
14 cate of loss of nationality, or

15 “(D) the date a court of the United States  
16 cancels a naturalized citizen’s certificate of nat-  
17 uralization.

18 Subparagraph (A) or (B) shall not apply to any indi-  
19 vidual unless the renunciation or voluntary relin-  
20 quishment is subsequently approved by the issuance  
21 to the individual of a certificate of loss of nationality  
22 by the United States Department of State.

23 “(4) LONG-TERM RESIDENT.—

24 “(A) IN GENERAL.—The term ‘long-term  
25 resident’ means any individual (other than a

1 citizen of the United States) who is a lawful  
2 permanent resident of the United States in at  
3 least 8 taxable years during the period of 15  
4 taxable years ending with the taxable year dur-  
5 ing which the expatriation date occurs. For pur-  
6 poses of the preceding sentence, an individual  
7 shall not be treated as a lawful permanent resi-  
8 dent for any taxable year if such individual is  
9 treated as a resident of a foreign country for  
10 the taxable year under the provisions of a tax  
11 treaty between the United States and the for-  
12 eign country and does not waive the benefits of  
13 such treaty applicable to residents of the for-  
14 eign country.

15 “(B) SPECIAL RULE.—For purposes of  
16 subparagraph (A), there shall not be taken into  
17 account—

18 “(i) any taxable year during which  
19 any prior sale is treated under subsection  
20 (a)(1) as occurring, or

21 “(ii) any taxable year prior to the tax-  
22 able year referred to in clause (i).

23 “(f) SPECIAL RULES APPLICABLE TO BENE-  
24 FICIARIES’ INTERESTS IN TRUST.—

1           “(1) IN GENERAL.—Except as provided in para-  
2           graph (2), if an individual is determined under para-  
3           graph (3) to hold an interest in a trust—

4                   “(A) the individual shall not be treated as  
5           having sold such interest,

6                   “(B) such interest shall be treated as a  
7           separate share in the trust, and

8                   “(C)(i) such separate share shall be treat-  
9           ed as a separate trust consisting of the assets  
10          allocable to such share,

11                   “(ii) the separate trust shall be treated as  
12          having sold its assets immediately before the ex-  
13          patriation date for their fair market value and  
14          as having distributed all of its assets to the in-  
15          dividual as of such time, and

16                   “(iii) the individual shall be treated as hav-  
17          ing recontributed the assets to the separate  
18          trust.

19          Subsection (a)(2) shall apply to any income, gain, or  
20          loss of the individual arising from a distribution de-  
21          scribed in subparagraph (C)(ii).

22           “(2) SPECIAL RULES FOR INTERESTS IN QUALI-  
23          FIED TRUSTS.—



1           “(A) IN GENERAL.—If the trust interest  
2 described in paragraph (1) is an interest in a  
3 qualified trust—

4                   “(i) paragraph (1) and subsection (a)  
5 shall not apply, and

6                   “(ii) in addition to any other tax im-  
7 posed by this title, there is hereby imposed  
8 on each distribution with respect to such  
9 interest a tax in the amount determined  
10 under subparagraph (B).

11           “(B) AMOUNT OF TAX.—The amount of  
12 tax under subparagraph (A)(ii) shall be equal to  
13 the lesser of—

14                   “(i) the highest rate of tax imposed by  
15 section 1(e) for the taxable year in which  
16 the expatriation date occurs, multiplied by  
17 the amount of the distribution, or

18                   “(ii) the balance in the deferred tax  
19 account immediately before the distribution  
20 determined without regard to any increases  
21 under subparagraph (C)(ii) after the 30th  
22 day preceding the distribution.

23           “(C) DEFERRED TAX ACCOUNT.—For pur-  
24 poses of subparagraph (B)(ii)—

1           “(i) OPENING BALANCE.—The open-  
2           ing balance in a deferred tax account with  
3           respect to any trust interest in an amount  
4           equal to the tax which would have been im-  
5           posed on the allocable expatriation gain  
6           with respect to the trust interest if such  
7           gain had been included in gross income  
8           under subsection (a).

9           “(ii) INCREASE FOR INTEREST.—The  
10          balance in the deferred tax account shall  
11          be increased by the amount of interest de-  
12          termined (on the balance in the account at  
13          the time the interest accrues), for periods  
14          after the 90th day after the expatriation  
15          date, by using the rates and method appli-  
16          cable under section 6621 for underpay-  
17          ments of tax for such periods.

18          “(iii) DECREASE FOR TAXES PRE-  
19          VIOUSLY PAID.—The balance in the tax de-  
20          ferred account shall be reduced—

21                 “(I) by the amount of taxes im-  
22                 posed by subparagraph (A) on any  
23                 distribution to the person holding the  
24                 trust interest, and

1                   “(II) in the case of a person  
2                   holding a nonvested interest, to the  
3                   extent provided in regulations, by the  
4                   amount of taxes imposed by subpara-  
5                   graph (A) on distributions from the  
6                   trust with respect to nonvested inter-  
7                   ests not held by such person.

8                   “(D) ALLOCABLE EXPATRIATION GAIN.—  
9                   For purposes of this paragraph, the allocable  
10                  expatriation gain with respect to any bene-  
11                  ficiary’s interest in a trust in the amount of  
12                  gain which would be allocable to such bene-  
13                  ficiary’s vested and nonvested interests in the  
14                  trust if the beneficiary held directly all assets  
15                  allocable to such interests.

16                  “(E) TAX DEDUCTED AND WITHHELD.—  
17                  “(i) IN GENERAL.—The tax imposed  
18                  by subparagraph (A)(ii) shall be deducted  
19                  and withheld by the trustees from the dis-  
20                  tribution to which it relates.

21                  “(ii) EXCEPTION WHERE FAILURE TO  
22                  WAIVE TREATY RIGHTS.—If an amount  
23                  may not be deducted and withheld under  
24                  clause (i) by reason of the distributee fail-

1           ing to waive any treaty right with respect  
2           to such distribution—

3                   “(I) the tax imposed by subpara-  
4                   graph (A)(ii) shall be imposed on the  
5                   trust and each trustee shall be person-  
6                   ally liable for the amount of such tax,  
7                   and

8                   “(II) any other beneficiary of the  
9                   trust shall be entitled to recover from  
10                  the distributee the amount of such tax  
11                  imposed on the other beneficiary.

12               “(F) DISPOSITION.—If a trust ceases to be  
13               a qualified trust at any time, a covered expatri-  
14               ate disposes of an interest in a qualified trust,  
15               or a covered expatriate holding an interest in a  
16               qualified trust dies, then, in lieu of the tax im-  
17               posed by subparagraph (A)(ii), there is hereby  
18               imposed a tax equal to the lesser of—

19                   “(i) the tax determined under para-  
20                   graph (1) as if the expatriation date were  
21                   the date of such cessation, disposition, or  
22                   death, whichever is applicable, or

23                   “(ii) the balance in the tax deferred  
24                   account immediately before such date.

1           Such tax shall be imposed on the trust and  
2           each trustee shall be personally liable for the  
3           amount of such tax and any other beneficiary  
4           of the trust shall be entitled to recover from the  
5           covered expatriate or the estate the amount of  
6           such tax imposed on the other beneficiary.

7           “(G) DEFINITIONS AND SPECIAL RULE.—

8           For purposes of this paragraph—

9           “(i) QUALIFIED TRUST.—The term  
10          ‘qualified trust’ means a trust—

11                   “(I) which is organized under,  
12                   and governed by, the laws of the Unit-  
13                   ed States or a State, and

14                   “(II) with respect to which the  
15                   trust instrument requires that at least  
16                   1 trustee of the trust be an individual  
17                   citizen of the United States or a do-  
18                   mestic corporation.

19          “(ii) VESTED INTEREST.—The term  
20          ‘vested interest’ means any interest which,  
21          as of the expatriation date, is vested in the  
22          beneficiary.

23          “(iii) NONVESTED INTEREST.—The  
24          term ‘nonvested interest’ means, with re-  
25          spect to any beneficiary, any interest in a

1 trust which is not a vested interest. Such  
2 interest shall be determined by assuming  
3 the maximum exercise of discretion in  
4 favor of the beneficiary and the occurrence  
5 of all contingencies in favor of the bene-  
6 ficiary.

7 “(iv) ADJUSTMENTS.—The Secretary  
8 may provide for such adjustments to the  
9 bases of assets in a trust or a deferred tax  
10 account, and the timing of such adjust-  
11 ments, in order to ensure that gain is  
12 taxed only once.

13 “(3) DETERMINATION OF BENEFICIARIES’ IN-  
14 TEREST IN TRUST.—

15 “(A) DETERMINATIONS UNDER PARA-  
16 GRAPH (1)—For purposes of paragraph (1), a  
17 beneficiary’s interest in a trust shall be based  
18 upon all relevant facts and circumstances, in-  
19 cluding the terms of the trust instrument and  
20 any letter of wishes or similar document, histor-  
21 ical patterns of trust distributions, and the ex-  
22 istence of and functions performed by a trust  
23 protector or any similar advisor.

24 “(B) OTHER DETERMINATIONS.—For pur-  
25 poses of this section—

1                   “(i) CONSTRUCTIVE OWNERSHIP.—If  
2                   a beneficiary of a trust is a corporation,  
3                   partnership, trust, or estate, the sharehold-  
4                   ers, partners, or beneficiaries shall be  
5                   deemed to be the trust beneficiaries for  
6                   purposes of this section.

7                   “(ii) TAXPAYER RETURN POSITION.—  
8                   A taxpayer shall clearly indicate on its in-  
9                   come tax return—

10                   “(I) the methodology used to de-  
11                   termine that taxpayer’s trust interest  
12                   under this section, and

13                   “(II) if the taxpayer knows (or  
14                   has reason to know) that any other  
15                   beneficiary of such trust is using a  
16                   different methodology to determine  
17                   such beneficiary’s trust interest under  
18                   this section.

19                   “(g) TERMINATION OF DEFERRALS, ETC.—On the  
20                   date any property held by an individual is treated as sold  
21                   under subsection (a), notwithstanding any other provision  
22                   of this title—

23                   “(1) any period during which recognition of in-  
24                   come or gain is deferred shall terminate, and

1           “(2) any extension of time for payment of tax  
2       shall cease to apply and the unpaid portion of such  
3       tax shall be due and payable at the time and in the  
4       manner prescribed by the Secretary.

5       “(h) IMPOSITION OF TENTATIVE TAX.—

6           “(1) IN GENERAL.—If an individual is required  
7       to include any amount in gross income under sub-  
8       section (a) for any taxable year, there is hereby im-  
9       posed, immediately before the expatriation date, a  
10      tax in an amount equal to the amount of tax which  
11      would be imposed if the taxable year were a short  
12      taxable year ending on the expatriation date.

13          “(2) DUE DATE.—The due date for any tax im-  
14      posed by paragraph (1) shall be the 90th day after  
15      the expatriation date.

16          “(3) TREATMENT OF TAX.—Any tax paid under  
17      paragraph (1) shall be treated as a payment of the  
18      tax imposed by this chapter for the taxable year to  
19      which subsection (a) applies.

20          “(4) DEFERRAL OF TAX.—The provisions of  
21      subsection (b) shall apply to the tax imposed by this  
22      subsection to the extent attributable to gain includ-  
23      ible in gross income by reason of this section.



1       “(i) COORDINATION WITH ESTATE AND GIFT  
2 TAXES.—If subsection (a) applies to property held by an  
3 individual for any taxable year and—

4               “(1) such property is includible in the gross es-  
5 tate of such individual solely by reason of section  
6 2107, or

7               “(2) section 2501 applies to a transfer of such  
8 property by such individual solely by reason of sec-  
9 tion 2501(a)(3).

10 then there shall be allowed as a credit against the addi-  
11 tional tax imposed by section 2101 or 2501, whichever is  
12 applicable, solely by reason of section 2107 or 2501(a)(3)  
13 an amount equal to the increase in the tax imposed by  
14 this chapter for such taxable year by reason of this sec-  
15 tion.

16       “(j) REGULATIONS.—The Secretary shall prescribe  
17 such regulations as may be necessary or appropriate to  
18 carry out the purposes of this section, including regula-  
19 tions—

20               “(1) to prevent double taxation by ensuring  
21 that—

22                       “(A) appropriate adjustments are made to  
23 basis to reflect gain recognized by reason of  
24 subsection (a) and the exclusion provided by  
25 subsection (a)(3), and

1           “(B) any gain by reason of a deemed sale  
 2           under subsection (a) of an interest in a corpora-  
 3           tion, partnership, trust, or estate is reduced to  
 4           reflect that portion of such gain which is attrib-  
 5           utable to an interest in a trust which a share-  
 6           holder, partner, or beneficiary is treated as  
 7           holding directly under subsection (f)(3)(B)(i),  
 8           and

9           “(2) which provide for the proper allocation of  
 10          the exclusion under subsection (a)(3) to property to  
 11          which this section applies.

12          “(k) CROSS REFERENCE.—

**“For income tax treatment of individuals who ter-  
 minate United States citizenship, see section  
 7701(a)(47).”.**

13          (b) INCLUSION IN INCOME OF GIFTS AND INHERIT-  
 14          ANCES FROM COVERED EXPATRIATES.—Section 102 (re-  
 15          lating to gifts, etc. not included in gross income) is amend-  
 16          ed by adding at the end the following new subsection:

17          “(d) GIFTS AND INHERITANCES FROM COVERED EX-  
 18          PATRIATES.—Subsection (a) shall not exclude from gross  
 19          income the value of any property acquired by gift, bequest,  
 20          devise, or inheritance from a covered expatriate after the  
 21          expatriation date. For purposes of this subsection, any  
 22          term used in this subsection which is also used in section  
 23          877A shall have the same meaning as when used in section  
 24          877A.”.

1       (c) DEFINITION OF TERMINATION OF UNITED  
2 STATES CITIZENSHIP.—Section 7701(a) is amended by  
3 adding at the end the following new paragraph:

4           “(47) TERMINATION OF UNITED STATES CITI-  
5 ZENSHIP.—An individual shall not cease to be treat-  
6 ed as a United States citizen before the date on  
7 which the individual’s citizenship is treated as relin-  
8 quished under section 877A(e)(3).”.

9       (d) CONFORMING AMENDMENTS.—

10           (1) Section 877 is amended by adding at the  
11 end the following new subsection:

12           “(f) APPLICATION.—This section shall not apply to  
13 any individual who relinquishes (within the meaning of  
14 section 877A(e)(3)) United States citizenship on or after  
15 February 6, 1995.”.

16           (2) Section 2107(c) is amended by adding at  
17 the end the following new paragraph:

18           “(3) CROSS REFERENCE.—For credit against  
19 the tax imposed by subsection (a) for expatriation  
20 tax, see section 877A(i).”.

21           (3) Section 2501(a)(3) is amended by adding at  
22 the end the following new flush sentence: “For cred-  
23 it against the tax imposed under this section by rea-  
24 son of this paragraph, see section 877A(i).”.

1           (4) Paragraph (10) of section 7701(b) is  
2           amended by adding at the end the following new  
3           sentence: “This paragraph shall not apply to any  
4           long-term resident of the United States who is an  
5           expatriate (as defined in section 877A(e)(1)).”.

6           (e) CLERICAL AMENDMENT.—The table of sections  
7           for subpart A of part II of subchapter N of chapter 1  
8           is amended by inserting after the item relating to section  
9           877 the following new item:

          “Sec. 877A. Tax responsibilities of expatriation.”.

10          (f) EFFECTIVE DATE.—

11           (1) IN GENERAL.—Except as provided in this  
12           subsection, the amendments made by this section  
13           shall apply to expatriates (within the meaning of  
14           section 877A(e) of the Internal Revenue Code of  
15           1986, as added by this section) whose expatriation  
16           date (as so defined) occurs on or after February 6,  
17           1995.

18           (2) GIFTS AND BEQUESTS.—Section 102(d) of  
19           the Internal Revenue Code of 1986 (as added by  
20           subsection (b)) shall apply to amounts received from  
21           expatriates (as so defined) whose expatriation date  
22           (as so defined) occurs on and after February 6,  
23           1995.

24           (3) SPECIAL RULES RELATING TO CERTAIN  
25           ACTS OCCURRING BEFORE FEBRUARY 6, 1995.—In

1 the case of an individual who took an act of expa-  
 2 triation specified in paragraph (1), (2), (3), or (4)  
 3 of section 349(a) of the Immigration and Nationality  
 4 Act (8 U.S.C. 1481(a) (1)–(4)) before February 6,  
 5 1995, but whose expatriation date (as so defined)  
 6 occurs after February 6, 1995—

7 (A) the amendment made by subsection (c)  
 8 shall not apply,

9 (B) the amendment made by subsection  
 10 (d)(1) shall not apply for any period prior to  
 11 the expatriation date, and

12 (C) the other amendments made by this  
 13 section shall apply as of the expatriation date.

14 (4) DUE DATE FOR TENTATIVE TAX.—The due  
 15 date under section 877A(h)(2) of such Code shall in  
 16 no event occur before the 90th day after the date of  
 17 the enactment of this Act.

18 **SEC. 212. INFORMATION ON INDIVIDUALS EXPATRIATING.**

19 (a) IN GENERAL.—Subpart A of part III of sub-  
 20 chapter A of chapter 61 is amended by inserting after sec-  
 21 tion 6039E the following new section:

22 **“SEC. 6039F. INFORMATION ON INDIVIDUALS EXPATRIAT-**  
 23 **ING.**

24 **“(a) REQUIREMENT.—**

1           “(1) IN GENERAL.—Notwithstanding any other  
2           provision of law, any expatriate (within the meaning  
3           of section 877A(e)(1)) shall provide a statement  
4           which includes the information described in sub-  
5           section (b).

6           “(2) TIMING.—

7                   “(A) CITIZENS.—In the case of an expatri-  
8           ate described in section 877(e)(1)(A), such  
9           statement shall be—

10                   “(i) provided not later than the expa-  
11           triation date (within the meaning of sec-  
12           tion 877A(e)(2)), and

13                   “(ii) provided to the person or court  
14           referred to in section 877A(e)(3).

15           “(B) NONCITIZENS.—In the case of an ex-  
16           patriate described in section 877A(e)(1)(B),  
17           such statement shall be provided to the Sec-  
18           retary with the return of tax imposed by chap-  
19           ter 1 for the taxable year during which the  
20           event described in such section occurs.

21           “(b) INFORMATION TO BE PROVIDED.—Information  
22           required under subsection (a) shall include—

23                   “(1) the taxpayer’s TIN,

24                   “(2) the mailing address of such individual’s  
25           principal foreign residence,

1           “(3) the foreign country in which such individ-  
2           ual is residing,

3           “(4) the foreign country of which such individ-  
4           ual is a citizen,

5           “(5) in the case of an individual having a net  
6           worth of at least the dollar amount applicable under  
7           section 877A(c)(1)(B), information detailing the as-  
8           sets and liabilities of such individual, and

9           “(6) such other information as the Secretary  
10          may prescribe.

11          “(c) PENALTY.—Any individual failing to provide a  
12          statement required under subsection (a) shall be subject  
13          to a penalty for each year during any portion of which  
14          such failure continues in an amount equal to the greater  
15          of—

16                 “(1) 5 percent of the additional tax required to  
17                 be paid under section 877A for such year, or

18                 “(2) \$1,000, unless it is shown that such fail-  
19                 ure is due to reasonable cause and not to willful ne-  
20                 glect.

21          “(d) INFORMATION TO BE PROVIDED TO SEC-  
22          RETARY.—Notwithstanding any other provision of law—

23                 “(1) any Federal agency or court which collects  
24                 (or is required to collect) the statement under sub-  
25                 section (a) shall provide to the Secretary—

1                   “(A) a copy of any such statement, and

2                   “(B) the name (and any other identifying  
3                   information) of any individual refusing to com-  
4                   ply with the provisions of subsection (a),

5                   “(2) the Secretary of State shall provide to the  
6                   Secretary a copy of each certificate as to the loss of  
7                   American nationality under section 358 of the Immi-  
8                   gration and Nationality Act which is approved by  
9                   the Secretary of State, and

10                  “(3) the Federal agency primarily responsible  
11                  for administering the immigration laws shall provide  
12                  to the Secretary the name of each lawful permanent  
13                  resident of the United States (within the meaning of  
14                  section 7701(b)(6)) whose status as such has been  
15                  revoked or has been administratively or judicially de-  
16                  termined to have been abandoned.

17   Notwithstanding any other provision of law, not later than  
18   30 days after the close of each calendar quarter, the Sec-  
19   retary shall publish in the Federal Register the name of  
20   each individual relinquishing United States citizenship  
21   (within the meaning of section 877A(e)(3)) with respect  
22   to whom the Secretary receives information under the pre-  
23   ceding sentence during such quarter.

24                  “(e) EXEMPTION.—The Secretary may by regulations  
25   exempt any class of individuals from the requirements of



1 this section if the Secretary determines that applying this  
 2 section to such individuals is not necessary to carry out  
 3 the purposes of this section.”.

4 (b) CLERICAL AMENDMENT.—The table of sections  
 5 for such subpart A is amended by inserting after the item  
 6 relating to section 6039E the following new item:

“Sec. 6039F. Information on individuals expatriating.”.

7 (c) EFFECTIVE DATE.—The amendments made by  
 8 this section shall apply to individuals to whom section  
 9 877A of the Internal Revenue Code of 1986 applies and  
 10 whose expatriation date (as defined in section 877A(e)(2))  
 11 occurs on or after February 6, 1995, except that no state-  
 12 ment shall be required by such amendments before the  
 13 90th day after the date of the enactment of this Act.

## 14 **CHAPTER 2—FOREIGN TRUST TAX**

### 15 **COMPLIANCE**

#### 16 **SEC. 221. IMPROVED INFORMATION REPORTING ON FOR-**

#### 17 **EIGN TRUSTS.**

18 (a) IN GENERAL.—Section 6048 (relating to returns  
 19 as to certain foreign trusts) is amended to read as follows:

#### 20 **“SEC. 6048. INFORMATION WITH RESPECT TO CERTAIN**

#### 21 **FOREIGN TRUSTS.**

22 “(a) NOTICE OF CERTAIN EVENTS.—

23 “(1) GENERAL RULE.—On or before the 90th  
 24 day (or such later day as the Secretary may pre-  
 25 scribe) after any reportable event, the responsible

1 party shall provide written notice of such event to  
2 the Secretary in accordance with paragraph (2).

3 “(2) CONTENTS OF NOTICE.—The notice re-  
4 quired by paragraph (1) shall contain such informa-  
5 tion as the Secretary may prescribe, including—

6 “(A) the amount of money or other prop-  
7 erty (if any) transferred to the trust in connec-  
8 tion with the reportable event, and

9 “(B) the identify of the trust and of each  
10 trustee and beneficiary or class of beneficiaries)  
11 of the trust.

12 “(3) REPORTABLE EVENT.—For purposes of  
13 this subsection—

14 “(A) IN GENERAL.—The term ‘reportable  
15 event’ means—

16 “(i) the creation of any foreign trust  
17 by a United States person,

18 “(ii) the transfer of any money or  
19 property (directly or indirectly) to a for-  
20 eign trust by a United States person, in-  
21 cluding a transfer by reason of death, and

22 “(iii) the death of a citizen or resident  
23 of the United States if—

24 “(I) the decedent was treated as  
25 the owner of any portion of a foreign

1 trust under the rules of subpart E of  
2 part I of subchapter J of chapter 1,  
3 or

4 “(II) any portion of a foreign  
5 trust was included in the gross estate  
6 of the decedent.

7 “(B) EXCEPTIONS.—

8 “(i) FAIR MARKET VALUE SALES.—  
9 Subparagraph (A)(ii) shall not apply to  
10 any transfer of property to a trust in ex-  
11 change for consideration of at least the fair  
12 market value of the transferred property.  
13 For purposes of the preceding sentence,  
14 consideration other than cash shall be  
15 taken into account at its fair market value  
16 and the rules of section 679(a)(3) shall  
17 apply.

18 “(ii) DEFERRED COMPENSATION AND  
19 CHARITABLE TRUSTS.—Subparagraph (A)  
20 shall not apply with respect to a trust  
21 which is—

22 “(I) described in section 402(b),  
23 404(a)(4), or 404A, or

1                   “(II) determined by the Sec-  
2                   retary to be described in section  
3                   501(c)(3).

4                   “(4) RESPONSIBLE PARTY.—For purposes of  
5                   this subsection, the term ‘responsible party’  
6                   means—

7                   “(A) the grantor in the case of the cre-  
8                   ation of an inter vivos trust.

9                   “(B) the transferor in the case of a report-  
10                  able event described in paragraph (3)(A)(ii)  
11                  other than a transfer by reason of death, and

12                  “(C) the executor of the decedent’s estate  
13                  in any other case.

14                  “(b) UNITED STATES GRANTOR OF FOREIGN  
15 TRUST.—

16                  “(1) IN GENERAL.—If, at any time during any  
17                  taxable year of a United States person, such person  
18                  is treated as the owner of any portion of a foreign  
19                  trust under the rules of subpart E of part I of sub-  
20                  chapter J of chapter 1, such person shall be respon-  
21                  sible to ensure that

22                  “(A) such trust makes a return for such  
23                  year which sets forth a full and complete ac-  
24                  counting of all trust activities and operations  
25                  for the year, the name of the United States

1 agent for such trust, and such other informa-  
2 tion as the Secretary may prescribe, and

3 “(B) such trust furnishes such information  
4 as the Secretary may prescribe to each United  
5 States person (i) who is treated as the owner of  
6 any portion of such trust or (ii) who receives  
7 (directly or indirectly) any distribution from the  
8 trust.

9 “(2) TRUSTS NOT HAVING UNITED STATES  
10 AGENT.—

11 “(A) IN GENERAL.—If the rules of this  
12 paragraph apply to any foreign trust, the deter-  
13 mination of amounts required to be taken into  
14 account with respect to such trust by a United  
15 States person under the rules of subpart E of  
16 part I of subchapter J of chapter 1 shall be de-  
17 termined by the Secretary.

18 “(B) UNITED STATES AGENT RE-  
19 QUIRED.—The rules of this paragraph shall  
20 apply to any foreign trust to which paragraph  
21 (1) applies unless such trust agrees (in such  
22 manner, subject to such conditions, and at such  
23 time as the Secretary shall prescribe) to author-  
24 ize a United States person to act as such  
25 trust’s limited agent solely for purposes of ap-

1           plying sections 7602, 7603, and 7604 with re-  
2           spect to—

3                   “(i) any request by the Secretary to  
4                   examine records or produce testimony re-  
5                   lated to the proper treatment of amounts  
6                   required to be taken into account under  
7                   the rules referred to in subparagraph (A),  
8                   or

9                   “(ii) any summons by the Secretary  
10                  for such records or testimony.

11          The appearance of persons or production of  
12          records by reason of a United States person  
13          being such an agent shall not subject such per-  
14          sons or records to legal process for any purpose  
15          other than determining the correct treatment  
16          under this title of the amounts required to be  
17          taken into account under the rules referred to  
18          in subparagraph (A). A foreign trust which ap-  
19          points an agent described in this subparagraph  
20          shall not be considered to have an office or a  
21          permanent establishment in the United States,  
22          or to be engaged in a trade or business in the  
23          United States, solely because of the activities of  
24          such agent pursuant to this subsection.

1           “(C) OTHER RULES TO APPLY.—Rules  
2           similar to the rules of paragraphs (2) and (4)  
3           of section 6038A(e) shall apply for purposes of  
4           this paragraph.

5           “(c) REPORTING BY UNITED STATES BENEFICIARIES  
6 OF FOREIGN TRUSTS.—

7           “(1) IN GENERAL.—If any United States per-  
8           son receives (directly or indirectly) during any tax-  
9           able year of such person any distribution from a for-  
10          eign trust, such person shall make a return with re-  
11          spect to such trust for such year which includes—

12                   “(A) the name of such trust,

13                   “(B) the aggregate amount of the distribu-  
14                  tions so received from such trust during such  
15                  taxable year, and

16                   “(C) such other information as the Sec-  
17                  retary may prescribe.

18           “(2) INCLUSION IN INCOME IF RECORDS NOT  
19          PROVIDED.—

20                   “(A) IN GENERAL.—If applicable records  
21                  are not provided to the Secretary to determine  
22                  the proper treatment of any distribution from a  
23                  foreign trust, such distribution shall be treated  
24                  as an accumulation distribution includable in  
25                  the gross income of the distributee under chap-

ter 1. To the extent provided in regulations, the preceeding sentence shall not apply if the foreign trust elects to be subject to rules similar to the rules of subsection (b)(2)(B).

“(B) APPLICATION OF ACCUMULATION DISTRIBUTION RULES.—For purposes of applying section 668 in a case to which subparagraph (A) applies, the applicable number of years for purposes of section 668(a) shall be  $\frac{1}{2}$  of the number of years the trust has been in existence.

“(d) SPECIAL RULES.—

“(1) DETERMINATION OF WHETHER UNITED STATES PERSON RECEIVES DISTRIBUTION.—For purposes of this section, in determining whether a United States person receives a distribution from a foreign trust, the fact that a portion of such trust is treated as owned by another person under the rules of subpart E of part I of subchapter J of chapter 1 shall be disregarded.

“(2) DOMESTIC TRUSTS WITH FOREIGN ACTIVITIES.—To the extent provided in regulations, a trust which is a United States person shall be treated as a foreign trust for purposes of this section and section 6677 if such trust has substantial activities, or



1 holds substantial property, outside the United  
2 States.

3 “(3) TIME AND MANNER OF FILING INFORMA-  
4 TION.—Any notice or return required under this sec-  
5 tion shall be made at such time and in such manner  
6 as the Secretary shall prescribe.

7 “(4) MODIFICATION OF RETURN REQUIRE-  
8 MENTS.—The Secretary is authorized to suspend or  
9 modify any requirement of this section if the Sec-  
10 retary determines that the United States has no sig-  
11 nificant tax interest in obtaining the required infor-  
12 mation.”.

13 (b) INCREASED PENALTIES.—Section 6677 (relating  
14 to failure to file information returns with respect to cer-  
15 tain foreign trusts) is amended to read as follows:

16 **“SEC. 6677. FAILURE TO FILE INFORMATION WITH RESPECT**  
17 **TO CERTAIN FOREIGN TRUSTS.**

18 “(a) CIVIL PENALTY.—In addition to any criminal  
19 penalty provided by law, if any notice or return required  
20 to be filed by section 6048—

21 “(1) is not filed on or before the time provided  
22 in such section, or

23 “(2) does not include all the information re-  
24 quired pursuant to such section or includes incorrect  
25 information.

1 the person required to file such notice or return shall pay  
2 a penalty equal to 35 percent of the gross reportable  
3 amount. If any failure described in the preceding sentence  
4 continues for more than 90 days after the day on which  
5 the Secretary mails notice of such failure to the person  
6 required to pay such penalty, such person shall pay a pen-  
7 alty (in addition to the amount determined under the pre-  
8 ceding sentence) of \$10,000 for each 30-day period (or  
9 fraction thereof) during which such failure continues after  
10 the expiration of such 90-day period. In no event shall the  
11 penalty under this subsection with respect to any failure  
12 exceed the gross reportable amount.

13 “(b) SPECIAL RULES FOR RETURNS UNDER SEC-  
14 TION 6048(b).—In the case of a return required under  
15 section 6048(b)—

16 “(1) the United States person referred to in  
17 such section shall be liable for the penalty imposed  
18 by subsection (a), and

19 “(2) subsection (a) shall be applied by sub-  
20 stituting ‘5 percent’ for ‘35 percent’.

21 “(c) GROSS REPORTABLE AMOUNT.—For purposes  
22 of subsection (a), the term ‘gross reportable amount’  
23 means—

1           “(1) the gross value of the property involved in  
2           the event (determined as of the date of the event)  
3           in the case of a failure relating to section 6048(a),

4           “(2) the gross value of the portion of the trust’s  
5           assets at the close of the year treated as owned by  
6           the United States person in the case of a failure re-  
7           lating to section 6048(b)(1), and

8           “(3) the gross amount of the distributions in  
9           the case of a failure relating to section 6048(c).

10          “(d) REASONABLE CAUSE EXCEPTION.—No penalty  
11 shall be imposed by this section on any failure which is  
12 shown to be due to reasonable cause and not due to willful  
13 neglect. The fact that a foreign jurisdiction would impose  
14 a civil or criminal penalty on the taxpayer (or any other  
15 person) for disclosing the required information is not rea-  
16 sonable cause.

17          “(e) DEFICIENCY PROCEDURES NOT TO APPLY.—  
18 Subchapter B of chapter 63 (relating to deficiency proce-  
19 dures for income, estate, gift, and certain excise taxes)  
20 shall not apply in respect of the assessment or collection  
21 of any penalty imposed by subsection (a).”.

22          (c) CONFORMING AMENDMENTS.—

23                 (1) Paragraph (2) of section 6724(d), as  
24                 amended by sections 11004 and 11045, is amended  
25                 by striking “or” at the end of subparagraph (U), by

1 striking the period at the end of subparagraph (V)  
 2 and inserting “,or”, and by inserting after subpara-  
 3 graph (V) the following new subparagraph:

4 “(W) section 6048(b)(1)(B) (relating to  
 5 foreign trust reporting requirements).”.

6 (2) The table of sections for subpart B of part  
 7 III of subchapter A of chapter 61 is amended by  
 8 striking the item relating to section 6048 and insert-  
 9 ing the following new item:

“Sec. 604 Information with respect to certain foreign trusts.”.

10 (3) The table of sections for part I of sub-  
 11 chapter B of chapter 68 is amended by striking the  
 12 item relating to section 6677 and inserting the fol-  
 13 lowing new item:

“Sec. 6677. Failure to file information with respect to certain foreign trusts”

14 (d) EFFECTIVE DATES.—

15 (1) REPORTABLE EVENTS.—To the extent re-  
 16 lated to subsection (a) of section 6048 of the Inter-  
 17 nal Revenue Code of 1986, as amended by this sec-  
 18 tion, the amendments made by this section shall  
 19 apply to reportable events (as defined in such section  
 20 6048) occurring after the date of the enactment of  
 21 this Act.

22 (2) GRANTOR TRUST REPORTING.—To the ex-  
 23 tent related to subsection (b) of such section 6048,  
 24 the amendments made by this section shall apply to

1 taxable years of United States persons beginning  
2 after the date of the enactment of this Act.

3 (3) REPORTING BY UNITED STATES BENE-  
4 FICIARIES.—To the extent related to subsection (c)  
5 of such section 6048, the amendments made by this  
6 section shall apply to distributions received after the  
7 date of the enactment of this Act.

8 **SEC. 222. MODIFICATIONS OF RULES RELATING TO FOR-**  
9 **EIGN TRUSTS HAVING ONE OR MORE UNITED**  
10 **STATES BENEFICIARIES.**

11 (a) TREATMENT OF TRUST OBLIGATIONS, ETC.—

12 (1) Paragraph (2) of section 679(a) is amended  
13 by striking subparagraph (B) and inserting the fol-  
14 lowing:

15 “(B) TRANSFERS AT FAIR MARKET  
16 VALUE.—To any transfer of property to a trust  
17 in exchange for consideration of at least the fair  
18 market value of the transferred property. For  
19 purposes of the preceding sentence, consider-  
20 ation other than cash shall be taken into ac-  
21 count at its fair market value.”.

22 (2) Subsection (a) of section 679 (relating to  
23 foreign trusts having one or more United States  
24 beneficiaries) is amended by adding at the end the  
25 following new paragraph:

1           “(3) CERTAIN OBLIGATIONS NOT TAKEN INTO  
2 ACCOUNT UNDER FAIR MARKET VALUE EXCEP-  
3 TIONS.—

4           “(A) IN GENERAL.—In determining wheth-  
5 er paragraph (2)(B) applies to any transfer by  
6 a person described in clause (ii) or (iii) of sub-  
7 paragraph (C), there shall not be taken into ac-  
8 count—

9           “(i) except as provided in regulations,  
10 any obligation of a person described in  
11 subparagraph (C), and

12           “(ii) to the extent provided in regula-  
13 tions, any obligation which is guaranteed  
14 by a person described in subparagraph (C).

15           “(B) TREATMENT OF PRINCIPAL PAY-  
16 MENTS ON OBLIGATION.—Principal payments  
17 by the trust on any obligation referred to in  
18 subparagraph (A) shall be taken into account  
19 on and after the date of the payment in deter-  
20 mining the portion of the trust attributable to  
21 the property transferred.

22           “(C) PERSONS DESCRIBED.—The persons  
23 described in this subparagraph are—

24           “(i) the trust,

1 “(ii) any grantor or beneficiary of the  
2 trust, and

3 “(iii) any person who is related (with-  
4 in the meaning of section 643(i)(2)(B)) to  
5 any grantor or beneficiary of the trust.”.

6 (b) EXEMPTION OF TRANSFERS TO CHARITABLE  
7 TRUSTS.—Subsection (a) of section 679 is amended by  
8 striking “section 404(a)(4) or 404A” and inserting “sec-  
9 tion 6048(a)\*(3)(B)(ii)”.

10 (c) OTHER MODIFICATIONS.—Subsection (a) of sec-  
11 tion 679 is amended by adding at the end the following  
12 new paragraphs:

13 “(4) SPECIAL RULES APPLICABLE TO FOREIGN  
14 GRANTOR WHO LATER BECOMES A UNITED STATES  
15 PERSON.—

16 “(A) IN GENERAL.—If a nonresident alien  
17 individual has a residency starting date within  
18 5 years after directly or indirectly transferring  
19 property to a foreign trust, this section and sec-  
20 tion 6048 shall be applied as if such individual  
21 transferred to such trust on the residency start-  
22 ing date an amount equal to the portion of such  
23 trust attributable to the property transferred by  
24 such individual to such trust in such transfer.

1           “(B) TREATMENT OF UNDISTRIBUTED IN-  
2           COME.—For purposes of this section, undistrib-  
3           uted net income for periods before such individ-  
4           ual’s residency starting date shall be taken into  
5           account in determining the portion of the trust  
6           which is attributable to property transferred by  
7           such individual to such trust but shall not oth-  
8           erwise be taken into account.

9           “(C) RESIDENCY STARTING DATE.—For  
10          purposes of this paragraph, an individual’s resi-  
11          dency starting date is the residency starting  
12          date determined under section 7701(b)(2)(A).

13          “(5) OUTBOUND TRUST MIGRATIONS.—If—

14               “(A) an individual who is a citizen or resi-  
15               dent of the United States transferred property  
16               to a trust which was not a foreign trust, and

17               “(B) such trust becomes a foreign trust  
18               while such individual is alive,

19          then this section and section 6048 shall be applied  
20          as if such individual transferred to such trust on the  
21          date such trust becomes a foreign trust an amount  
22          equal to the portion of such trust attributable to the  
23          property previously transferred by such individual to  
24          such trust. A rule similar to the rule of paragraph  
25          (4)(B) shall apply for purposes of this paragraph.”.



1 (d) MODIFICATION RELATING TO WHETHER TRUST  
2 HAS UNITED STATES BENEFICIARIES.—Subsection (c) of  
3 section 679 is amended by adding at the end the following  
4 new paragraph:

5 “(3) CERTAIN UNITED STATES BENEFICIARIES  
6 DISREGARDED.—A beneficiary shall not be treated  
7 as a United States person in applying this section  
8 with respect to any transfer of property to foreign  
9 trust if such beneficiary first became a United  
10 States person more than 5 years after the date of  
11 such transfer.”.

12 (e) TECHNICAL AMENDMENT.—Subparagraph (A) of  
13 section 679(c)(2) is amended to read as follows:

14 “(A) in the case of a foreign corporation,  
15 such corporation is a controlled foreign corpora-  
16 tion (as defined in section 957(a)),”.

17 (f) REGULATIONS.—Section 679 is amended by add-  
18 ing at the end the following new subsection:

19 “(d) REGULATIONS.—The Secretary shall prescribe  
20 such regulations as may be necessary or appropriate to  
21 carry out the purposes of this section.”.

22 (g) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to transfers of property after Feb-  
24 ruary 6, 1995.

1 **SEC. 233. FOREIGN PERSONS NOT TO BE TREATED AS OWN-**  
2 **ERS UNDER GRANTOR TRUST RULES.**

3 (a) GENERAL RULE.—

4 (1) Subsection (f) of section 672 (relating to  
5 special rule where grantor is foreign person) is  
6 amended to read as follows:

7 “(f) SUBPART NOT TO RESULT IN FOREIGN OWNER-  
8 SHIP.—

9 “(1) IN GENERAL.—Notwithstanding any other  
10 provision of this subpart, this subpart shall apply  
11 only to the extent such application results in an  
12 amount being currently taken into account (directly  
13 or through 1 or more entities) under this chapter in  
14 computing the income of a citizen or resident of the  
15 United States or a domestic corporation.

16 “(2) EXCEPTIONS.—

17 “(A) CERTAIN REVOCABLE AND IRREV-  
18 OCABLE TRUSTS.—Paragraph (1) shall not  
19 apply to any trust if—

20 “(i) the power to revest absolutely in  
21 the grantor title to the trust property is  
22 exercisable solely by the grantor without  
23 the approval or consent of any other per-  
24 son or with the consent of a related or sub-  
25 ordinate party who is subservient to the  
26 grantor, or

1                   “(ii) the only amounts distributable  
2                   from such trust (whether income or cor-  
3                   pus) during the lifetime of the grantor are  
4                   amounts distributable to the grantor or the  
5                   spouse of the grantor.

6                   “(B) COMPENSATORY TRUSTS.—Except as  
7                   provided in regulations, paragraph (1) shall not  
8                   apply to any portion of a trust distributions  
9                   from which are taxable as compensation for  
10                  services rendered.

11                  “(3) SPECIAL RULES.—Except as otherwise  
12                  provided in regulations prescribed by the Sec-  
13                  retary—

14                   “(A) a controlled foreign corporation (as  
15                   defined in section 957) shall be treated as a do-  
16                   mestic corporation for purposes of paragraph  
17                   (1), and

18                   “(B) paragraph (1) shall not apply for  
19                   purposes of applying section 1296.

20                  “(4) RECHARACTERIZATION OF PURPORTED  
21                  GIFTS.—In the case of any transfer directly or indi-  
22                  rectly from a partnership or foreign corporation  
23                  which the transferee treats as a gift or bequest, the  
24                  Secretary may recharacterize such transfer in such  
25                  circumstances as the Secretary determines to be ap-

1 appropriate to prevent the avoidance of the purposes of  
2 this subsection.

3 “(5) SPECIAL RULE WHERE GRANTOR IS FOR-  
4 EIGN PERSON.—If—

5 “(A) but for this subsection, a foreign per-  
6 son would be treated as the owner of any por-  
7 tion of a trust, and

8 “(B) such trust has a beneficiary who is a  
9 United States person,

10 such beneficiary shall be treated as the grantor of  
11 such portion to the extent such beneficiary has made  
12 transfers of property by gift (directly or indirectly)  
13 to such foreign person. For purposes of the preced-  
14 ing sentence, any gift shall not be taken into account  
15 to the extent such gift would be excluded from tax-  
16 able gifts under section 2503(b).

17 “(6) REGULATIONS.—The Secretary shall pre-  
18 scribe such regulations as may be necessary or ap-  
19 propriate to carry out the purposes of this sub-  
20 section, including regulations providing that para-  
21 graph (1) shall not apply in appropriate cases.”.

22 (2) The last sentence of subsection (c) of sec-  
23 tion 672 of such Code is amended by inserting “sub-  
24 section (f) and” before “sections 674”.

1 (b) CREDIT FOR CERTAIN TAXES.—Paragraph (2) of  
2 section 665(d) is amended by adding at the end the follow-  
3 ing new sentence: “Under rules or regulations prescribed  
4 by the Secretary, in the case of any foreign trust of which  
5 the settlor or another person would be treated as owner  
6 of any portion of the trust under subpart E but for section  
7 672(f), the term ‘taxes imposed on the trust’ includes the  
8 allocable amount of any income, war profits, and excess  
9 profits taxes imposed by any foreign country or possession  
10 of the United States on the settlor or such other person  
11 in respect of trust gross income.”.

12 (c) DISTRIBUTION BY CERTAIN FOREIGN TRUSTS  
13 THROUGH NOMINEES.—

14 (1) Section 643 is amended by adding at the  
15 end the following new subsection:

16 “(h) DISTRIBUTION BY CERTAIN FOREIGN TRUSTS  
17 THROUGH NOMINEES.—For purposes of this part, any  
18 amount paid to a United States person which is derived  
19 directly or indirectly from a foreign trust of which the  
20 payor is not the grantor shall be deemed in the year of  
21 payment to have been directly paid by the foreign trust  
22 to such United States person.”.

23 (2) Section 665 is amended by striking sub-  
24 section (c).

25 (d) EFFECTIVE DATE.—

1           (1) IN GENERAL.—Except as provided by para-  
2           graph (2), the amendments made by this section  
3           shall take effect on the date of the enactment of this  
4           Act.

5           (2) EXCEPTION FOR CERTAIN TRUSTS.—The  
6           amendments made by this section shall not apply to  
7           any trust—

8                   (A) which is treated as owned by the  
9                   grantor or another person under section 676 or  
10                  677 (other than subsection (a)(3) thereof) of  
11                  the Internal Revenue Code of 1986, and

12                   (B) which is in existence on September 19,  
13                  1995.

14           The preceding sentence shall not apply to the por-  
15           tion of any such trust attributable to any transfer to  
16           such trust after September 19, 1995.

17           (e) TRANSITIONAL RULE.—If—

18                   (1) by reason of the amendments made by this  
19                   section, any person other than a United States per-  
20                   son ceases to be treated as the owner of a portion  
21                   of a domestic trust, and

22                   (2) before January 1, 1997, such trust becomes  
23                   a foreign trust, or the assets of such trust are trans-  
24                   ferred to a foreign trust,

1 no tax shall be imposed by section 1491 of the Internal  
2 Revenue Code of 1986 by reason of such trust becoming  
3 a foreign trust or the assets of such trust being trans-  
4 ferred to a foreign trust.

5 **SEC. 224. INFORMATION REPORTING REGARDING FOREIGN**  
6 **GIFTS.**

7 (a) IN GENERAL.—Subpart A of part III of sub-  
8 chapter A of chapter 61 is amended by inserting after sec-  
9 tion 6039F the following new section:

10 **“SEC. 6039G. NOTICE OF GIFTS RECEIVED FROM FOREIGN**  
11 **PERSONS.**

12 “(a) IN GENERAL.—If the value of the aggregate for-  
13 eign gifts received by a United States person (other than  
14 an organization described in section 501(c) and exempt  
15 from tax under section 501(a)) during any taxable year  
16 exceeds \$10,000, such United States person shall furnish  
17 (at such time and in such manner as the Secretary shall  
18 prescribe) such information as the Secretary may pre-  
19 scribe regarding each foreign gift received during such  
20 year.

21 “(b) FOREIGN GIFT.—For purposes of this section,  
22 the term ‘foreign gift’ means any amount received from  
23 a person other than a United States person which the re-  
24 cipient treats as a gift or bequest. Such term shall not

1 include any qualified transfer (within the meaning of sec-  
2 tion 2503(e)(2)).

3 “(c) PENALTY FOR FAILURE TO FILE INFORMA-  
4 TION.—

5 “(1) IN GENERAL.—If a United States person  
6 fails to furnish the information required by sub-  
7 section (a) with respect to any foreign gift within  
8 the time prescribed therefor (including extensions)—

9 “(A) the tax consequences of the receipt of  
10 such gift shall be determined by the Secretary  
11 in the Secretary’s sole discretion from the Sec-  
12 retary’s own knowledge or from such informa-  
13 tion as the Secretary may obtain through testi-  
14 mony or otherwise, and

15 “(B) such United States person shall pay  
16 (upon notice and demand by the Secretary and  
17 in the same manner as tax) an amount equal to  
18 5 percent of the amount of such foreign gift for  
19 each month for which the failure continues (not  
20 to exceed 25 percent of such amount in the ag-  
21 gregate).

22 “(2) REASONABLE CAUSE EXCEPTION.—Para-  
23 graph (1) shall not apply to any failure to report a  
24 foreign gift if the United States person shows that



1 the failure is due to reasonable cause and not due  
2 to willful neglect.

3 “(d) COST-OF-LIVING ADJUSTMENT.—In the case of  
4 any taxable year beginning after December 31, 1996, the  
5 \$10,000 amount under subsection (a) shall be increased  
6 by an amount equal to the product of such amount and  
7 the cost-of-living adjustment for such taxable year under  
8 section 1(f)(3), except that subparagraph (B) thereof shall  
9 be applied by substituting ‘1995’ for ‘1992’.

10 “(e) REGULATIONS.—The Secretary shall prescribe  
11 such regulations as may be necessary or appropriate to  
12 carry out the purposes of this section.”.

13 “(b) CLERICAL AMENDMENT.—The table of sections  
14 for such subpart is amended by inserting after the item  
15 relating to section 6039F the following new item:

“Sec. 6039G. Notice of large gifts received from foreign persons.”.

16 “(c) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to amounts received after the date  
18 of the enactment of this Act in taxable years ending after  
19 such date.

20 **SEC. 225. MODIFICATION OF RULES RELATING TO FOREIGN**  
21 **TRUSTS WHICH ARE NOT GRANTOR TRUSTS.**

22 “(a) MODIFICATION OF INTEREST CHARGE ON ACCU-  
23 MULATION DISTRIBUTIONS.—Subsection (a) of section  
24 668 (relating to interest charge on accumulation distribu-  
25 tions from foreign trusts) is amended to read as follows:

1       “(a) GENERAL RULE.—For purposes of the tax de-  
2   termined under section 667(a)—

3               “(1) INTEREST DETERMINED USING  
4   UNDERPAYMENT RATES.—The interest charge deter-  
5   mined under this section with respect to any dis-  
6   tribution is the amount of interest which would be  
7   determined on the partial tax computed under sec-  
8   tion 667(b) for the period described in paragraph  
9   (2) using the rates and the method under section  
10   6621 applicable to underpayments of tax.

11              “(2) PERIOD.—For purposes of paragraph (1),  
12   the period described in this paragraph is the period  
13   which begins on the date which is the applicable  
14   number of years before the date of the distribution  
15   and which ends on the date of the distribution.

16              “(3) APPLICABLE NUMBER OF YEARS.—For  
17   purposes of paragraph (2)—

18                      “(A) IN GENERAL.—The applicable num-  
19   ber of years with respect to a distribution is the  
20   number determined by dividing—

21                              “(i) the sum of the products described  
22                              in subparagraph (B) with respect to each  
23                              undistributed income year, by

24                              “(ii) the aggregate undistributed net  
25                              income.

1           The quotient determined under the preceding  
2           sentence shall be rounded under procedures  
3           prescribed by the Secretary.

4           “(B) PRODUCT DESCRIBED.—For pur-  
5           poses of subparagraph (A), the product de-  
6           scribed in this subparagraph with respect to  
7           any undistributed income year is the product  
8           of—

9                   “(i) the undistributed net income for  
10           such year, and

11                   “(ii) the sum of the number of taxable  
12           years between such year and the taxable  
13           year of the distribution (counting in each  
14           case the undistributed income year but not  
15           counting the taxable year of the distribu-  
16           tion).

17           “(4) UNDISTRIBUTED INCOME YEAR.—For pur-  
18           poses of this subsection, the term ‘undistributed in-  
19           come year’ means any prior taxable year of the trust  
20           for which there is undistributed net income, other  
21           than a taxable year during all of which the bene-  
22           ficiary receiving the distribution was not a citizen or  
23           resident of the United States.

24           “(5) DETERMINATION OF UNDISTRIBUTED NET  
25           INCOME.—Notwithstanding section 666, for pur-

1 poses of this subsection, an accumulation distribu-  
 2 tion from the trust shall be treated as reducing pro-  
 3 portionately the undistributed net income for undis-  
 4 tributed income years.

5 “(6) PERIODS BEFORE 1996.—Interest for the  
 6 portion of the period described in paragraph (2)  
 7 which occurs before January 1, 1996, shall be deter-  
 8 mined—

9 “(A) by using an interest rate of 6 percent,  
 10 and

11 “(B) without compounding until January  
 12 1, 1996.”.

13 (b) ABUSIVE TRANSACTIONS.—Section 643(a) is  
 14 amended by inserting after paragraph (6) the following  
 15 new paragraph:

16 “(7) ABUSIVE TRANSACTIONS.—The Secretary  
 17 shall prescribe such regulations as may be necessary  
 18 or appropriate to carry out the purposes of this part,  
 19 including regulations to prevent avoidance of such  
 20 purposes.”.

21 (c) TREATMENT OF LOANS FROM TRUSTS.—

22 (1) IN GENERAL.—Section 643 (relating to  
 23 definitions applicable to subparts A, B, C, and D)  
 24 is amended by adding at the end the following new  
 25 subsection:

1       “(i) LOANS FROM FOREIGN TRUSTS.—For purposes  
2 of subparts B, C, and D—

3               “(1) GENERAL RULE.—Except as provided in  
4 regulations, if a foreign trust makes a loan of cash  
5 or marketable securities directly or indirectly to—

6                       “(A) any grantor or beneficiary of such  
7 trust who is a United States person, or

8                       “(B) any United States person not de-  
9 scribed in subparagraph (A) who is related to  
10 such grantor or beneficiary,

11 the amount of such loan shall be treated as a dis-  
12 tribution by such trust to such grantor or bene-  
13 ficiary (as the case may be).

14               “(2) DEFINITIONS AND SPECIAL RULES.—For  
15 purposes of this subsection—

16                       “(A) CASH.—The term ‘cash’ includes for-  
17 eign currencies and cash equivalents.

18                       “(B) RELATED PERSON.—

19                               “(i) IN GENERAL.—A person is relat-  
20 ed to another person if the relationship be-  
21 tween such persons would result in a dis-  
22 allowance of losses under section 267 or  
23 707(b). In applying section 267 for pur-  
24 poses of the preceding sentence, section  
25 267(c)(4) shall be applied as if the family

1 of an individual includes the spouses of the  
2 members of the family.

3 “(ii) ALLOCATION.—If any person de-  
4 scribed in paragraph (1)(B) is related to  
5 more than one person, the grantor or bene-  
6 ficiary to whom the treatment under this  
7 subsection applies shall be determined  
8 under regulations prescribed by the Sec-  
9 retary.

10 “(C) EXCLUSION OF TAX-EXEMPTS.—The  
11 term ‘United States person’ does not include  
12 any entity exempt from tax under this chapter.

13 “(D) TRUST NOT TREATED AS SIMPLE  
14 TRUST.—Any trust which is treated under this  
15 subsection as making a distribution shall be  
16 treated as not described in section 651.

17 “(3) SUBSEQUENT TRANSACTIONS REGARDING  
18 LOAN PRINCIPAL.—If any loan is taken into account  
19 under paragraph (1), any subsequent transaction be-  
20 tween the trust and the original borrower regarding  
21 the principal of the loan (by way of complete or par-  
22 tial repayment, satisfaction, cancellation, discharge,  
23 or otherwise) shall be disregarded for purposes of  
24 this title.”

1           (2) TECHNICAL AMENDMENT.—Paragraph (8)  
2       of section 7872(f) is amended by inserting “,  
3       643(i).” before “or 1274” each place it appears.

4       (d) EFFECTIVE DATES.—

5           (1) INTEREST CHARGE.—The amendment made  
6       by subsection (a) shall apply to distributions after  
7       the date of the enactment of this Act.

8           (2) ABUSIVE TRANSACTIONS.—The amendment  
9       made by subsection (b) shall take effect on the date  
10      of the enactment of this Act.

11          (3) LOANS FROM TRUSTS.—The amendment  
12      made by subsection (c) shall apply to loans of cash  
13      or marketable securities after September 19, 1995.

14   **SEC. 226. RESIDENCE OF ESTATES AND TRUSTS, ETC.**

15      (a) TREATMENT AS UNITED STATES PERSON.—

16          (1) IN GENERAL.—Paragraph (30) of section  
17      7701(a) is amended by striking subparagraph (D)  
18      and by inserting after subparagraph (C) the follow-  
19      ing:

20                  “(D) any estate or trust if—

21                          “(i) a court within the United States  
22                          is able to exercise primary supervision over  
23                          the administration of the estate or trust,  
24                          and

1                   “(ii) in the case of a trust, one or  
2                   more United States fiduciaries have the  
3                   authority to control all substantial deci-  
4                   sions of the trust.”.

5                   (2) CONFORMING AMENDMENT.—Paragraph  
6                   (31) of section 7701(a) is amended to read as fol-  
7                   lows:

8                   “(31) FOREIGN ESTATE OR TRUST.—The term  
9                   ‘foreign estate’ or ‘foreign trust’ means any estate or  
10                  trust other than an estate or trust described in sec-  
11                  tion 7701(a)(30)(D).”.

12                  (3) EFFECTIVE DATE.—The amendments made  
13                  by this subsection shall apply—

14                         (A) to taxable years beginning after De-  
15                         cember 31, 1996, or

16                         (B) at the election of the trustee of a  
17                         trust, to taxable years ending after the date of  
18                         the enactment of this Act.

19                  Such an election, once made, shall be irrevocable.

20                  (b) DOMESTIC TRUSTS WHICH BECOME FOREIGN  
21                  TRUSTS.—

22                         (1) IN GENERAL.—Section 1491 (relating to  
23                         imposition of tax on transfers to avoid income tax)  
24                         is amended by adding at the end the following new  
25                         flush sentence:



1 “If a trust which is not a foreign trust becomes a foreign  
 2 trust, such trust shall be treated for purposes of this sec-  
 3 tion as having transferred, immediately before becoming  
 4 a foreign trust, all of its assets to a foreign trust.”.

5 (2) PENALTY.—Section 1494 is amended by  
 6 adding at the end the following new subsection:

7 “(c) PENALTY.—In the case of any failure to file a  
 8 return required by the Secretary with respect to any trans-  
 9 fer described in section 1491 with respect to a trust, the  
 10 person required to file such return shall be liable for the  
 11 penalties provided in section 6677 in the same manner as  
 12 if such failure were a failure to file a return under section  
 13 6048(a).”.

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

## 17 **CHAPTER 3—REPEAL OF BAD DEBT RE-** 18 **SERVE METHOD FOR THRIFT SAVINGS** 19 **ASSOCIATIONS**

### 20 **SEC. 231. REPEAL OF BAD DEBT RESERVE METHOD FOR** 21 **THRIFT SAVINGS ASSOCIATIONS.**

22 (a) IN GENERAL.—Section 593 (relating to reserves  
 23 for losses on loans) is amended by adding at the end the  
 24 following new subsections:

1       “(f) TERMINATION OF RESERVE METHOD.—Sub-  
 2 sections (a), (b), (c), and (d) shall not apply to any taxable  
 3 year beginning after December 31, 1995.

4       “(g) 6-YEAR SPREAD OF ADJUSTMENTS.—

5               “(1) IN GENERAL.—In the case of any taxpayer  
 6 who is required by reason of subsection (f) to change  
 7 its method of computing reserves for bad debts—

8                       “(A) such change shall be treated as a  
 9 change in a method of accounting,

10                      “(B) such change shall be treated as initi-  
 11 ated by the taxpayer and as having been made  
 12 with the consent of the Secretary, and

13                      “(C) the net amount of the adjustments  
 14 required to be taken into account by the tax-  
 15 payer under section 481(a)—

16                               “(i) shall be determined by taking into  
 17 account only applicable excess reserves,  
 18 and

19                               “(ii) as so determined, shall be taken  
 20 into account ratably over the 6-taxable  
 21 year period beginning with the first taxable  
 22 year beginning after December 31, 1995.

23       “(2) APPLICABLE EXCESS RESERVES.—

1           “(A) IN GENERAL.—For purposes of para-  
2 graph (1), the term ‘applicable excess reserves’  
3 means the excess (if any) of—

4           “(i) the balance of the reserves de-  
5 scribed in subsection (c)(1) (other than the  
6 supplemental reserve) as of the close of the  
7 taxpayer’s last taxable year beginning be-  
8 fore December 31, 1995, over

9           “(ii) the lesser of—

10           “(I) the balance of such reserves  
11 as of the close of the taxpayer’s last  
12 taxable year beginning before January  
13 1, 1988, or

14           “(II) the balance of the reserves  
15 described in subclause (I), reduced in  
16 the same manner as under section  
17 585(b)(2)(B)(ii) on the basis of the  
18 taxable years described in clause (i)  
19 and this clause.

20           “(B) SPECIAL RULE FOR THRIFTS WHICH  
21 BECOME SMALL BANKS.—In the case of a bank  
22 (as defined in section 581) which was not a  
23 large bank (as defined in section 585(c)(2)) for  
24 its first taxable year beginning after December  
25 31, 1995—

1           “(i) the balance taken into account  
 2           under subparagraph (A)(ii) shall not be  
 3           less than the amount which would be the  
 4           balance of such reserves as of the close of  
 5           its last taxable year beginning before such  
 6           date if the additions to such reserves for  
 7           all taxable years had been determined  
 8           under section 585(b)(2)(A), and

9           “(ii) the opening balance of the re-  
 10          serve for bad debts as of the beginning of  
 11          such first taxable year shall be the balance  
 12          taken into account under subparagraph  
 13          (A)(ii) (determined after the application of  
 14          clause (i) of this subparagraph).

15          The preceding sentence shall not apply for pur-  
 16          poses of paragraphs (5) and (6) or subsection  
 17          (e)(1).

18          “(3) RECAPTURE OF PRE-1988 RESERVES  
 19          WHERE TAXPAYER CEASES TO BE BANK.—If, during  
 20          any taxable year beginning after December 31,  
 21          1995, a taxpayer to which paragraph (1) applied is  
 22          not a bank (as defined in section 581), paragraph  
 23          (1) shall apply to the reserves described in para-  
 24          graph (2)(A)(ii) and the supplemental reserve: ex-  
 25          cept that such reserves shall be taken into account

1       ratably over the 6-taxable year period beginning with  
2       such taxable year.

3               “(4) SUSPENSION OF RECAPTURE IF RESIDEN-  
4       TIAL LOAN REQUIREMENT MET.—

5               “(A) IN GENERAL.— In the case of a bank  
6       which meets the residential loan requirement of  
7       subparagraph (B) for the first taxable year be-  
8       ginning after December 31, 1995, or for the  
9       following taxable year—

10              “(i) no adjustment shall be taken into  
11              account under paragraph (1) for such tax-  
12              able year, and

13              “(ii) such taxable year shall be dis-  
14              regarded in determining—

15              “(I) whether any other taxable  
16              year is a taxable year for which an  
17              adjustment is required to be taken  
18              into account under paragraph (1), and

19              “(II) the amount of such adjust-  
20              ment.

21              “(B) RESIDENTIAL LOAN REQUIRE-  
22       MENT.—A taxpayer meets the residential loan  
23       requirement of this subparagraph for any tax-  
24       able year if the principal amount of the residen-  
25       tial loans made by the taxpayer during such

1           year is not less than the base amount for such  
2           year.

3           “(C) RESIDENTIAL LOAN.—For purposes  
4           of this paragraph, the term ‘residential loan’  
5           means any loan described in clause (v) of sec-  
6           tion 7701(a)(19)(C) but only if such loan is in-  
7           curred in acquiring, constructing, or improving  
8           the property described in such clause.

9           “(D) BASE AMOUNT.—For purposes of  
10          subparagraph (B), the base amount is the aver-  
11          age of the principal amounts of the residential  
12          loans made by the taxpayer during the 6 most  
13          recent taxable years beginning on or before De-  
14          cember 31, 1995. At the election of the tax-  
15          payer who made such loans during each of such  
16          6 taxable years, the preceding sentence shall be  
17          applied without regard to the taxable year in  
18          which such principal amount was the highest  
19          and the taxable year in such principal amount  
20          was the lowest. Such an election may be made  
21          only for the first taxable year beginning after  
22          such date, and, if made for such taxable year,  
23          shall apply to the succeeding taxable year un-  
24          less revoked with the consent of the Secretary.

1           “(E) CONTROLLED GROUPS.—In the case  
2           of a taxpayer which is a member of any con-  
3           trolled group of corporations described in sec-  
4           tion 1563(a)(1), subparagraph (B) shall be ap-  
5           plied with respect to such group.

6           “(5) CONTINUED APPLICATION OF FRESH  
7           START UNDER SECTION 585 TRANSITIONAL RULES.—  
8           In the case of a taxpayer to which paragraph (1) ap-  
9           plied and which was not a large bank (as defined in  
10          section 585(c)(2)) for its first taxable year beginning  
11          after December 31, 1995.

12          “(A) IN GENERAL.—For purposes of deter-  
13          mining the net amount of adjustments referred  
14          to in section 585(c)(3)(A)(iii), there shall be  
15          taken into account only the excess (if any) of  
16          the reserve for bad debts as of the close of the  
17          last taxable year before the disqualification year  
18          over the balance taken into account by such  
19          taxpayer under paragraph (2)(A)(ii) of this sub-  
20          section.

21          “(B) TREATMENT UNDER ELECTIVE CUT-  
22          OFF METHOD.—For purposes of applying sec-  
23          tion 585(c)(4)—

24                 “(i) the balance of the reserve taken  
25                 into account under subparagraph (B)

1           thereof shall be reduced by the balance  
2           taken into account by such taxpayer under  
3           paragraph (2)(A)(ii) of this subsection,  
4           and

5           “(ii) no amount shall be includable in  
6           gross income by reason of such reduction.

7           “(6) SUSPENDED RESERVE INCLUDED AS SEC-  
8           TION 381(C) ITEMS.—The balance taken into account  
9           by a taxpayer under paragraph (2)(A)(ii) of this  
10          subsection and the supplemental reserve shall be  
11          treated as items described in section 381(c).

12          “(7) CONVERSIONS TO CREDIT UNIONS.—In the  
13          case of a taxpayer to which paragraph (1) applied  
14          which becomes a credit union described in section  
15          501(c) and exempt from taxation under section  
16          501(a)—

17               “(A) any amount required to be included  
18               in the gross income of the credit union by rea-  
19               son of this subsection shall be treated as de-  
20               rived from an unrelated trade or business (as  
21               defined in section 513), and

22               “(B) for purposes of paragraph (3), the  
23               credit union shall not be treated as if it were  
24               a bank.



1           “(8) REGULATIONS.—The Secretary shall pre-  
2       scribe such regulations as may be necessary to carry  
3       out this subsection and subsection (e), including reg-  
4       ulations providing for the application of such sub-  
5       sections in the case of acquisitions, mergers, spin-  
6       offs, and other reorganizations.”

7       (b) CONFORMING AMENDMENTS.—

8           (1) Subsection (d) of section 50 is amended by  
9       adding at the end the following new sentence:  
10      “Paragraphs (1)(A), (2)(A), and (4) of the section 46(e)  
11      referred to in paragraph (1) of this subsection shall not  
12      apply to any taxable year beginning after December 31,  
13      1995.”

14          (2) Subsection (e) of section 52 is amended by  
15      striking paragraph (1) and by redesignating para-  
16      graph (2) and (3) as paragraphs (1) and (2), respec-  
17      tively.

18          (3) Subsection (a) of section 57 is amended by  
19      striking paragraph (4).

20          (4) Section 246 is amended by striking sub-  
21      section (f).

22          (5) Clause (i) of section 291(e)(1)(B) is amend-  
23      ed by striking “or to which section 593 applies”.

1           (6) Subparagraph (A) of section 585(a)(2) is  
2           amended by striking “other than an organization to  
3           which section 593 applies”.

4           (7)(A) The material preceding subparagraph  
5           (A) of section 593(e)(1) is amended by striking “by  
6           a domestic building and loan association or an insti-  
7           tution that is treated as a mutual savings bank  
8           under section 591(b)” and inserting “by a taxpayer  
9           having a balance described in subsection  
10          (g)(2)(A)(ii)”.

11          (B) Subparagraph (B) of section 593(e)(1) is amend-  
12          ed to read as follows:

13               (B) then out of the balance taken into account  
14               under subsection (g)(2)(A)(ii) (properly adjusted for  
15               amounts charged against such reserves for taxable  
16               years beginning after December 31, 1987).”.

17          (C) Paragraph (1) of section 593(e) is amended by  
18          adding at the end the following new sentence: “This para-  
19          graph shall not apply to any distribution of all of the stock  
20          of a bank (as defined in section 581 to another corporation  
21          if, immediately after the distribution, such bank and such  
22          other corporation are members of the same affiliated  
23          group (as defined in section 1504) and the provisions of  
24          section 5(e) of the Federal Deposit Insurance Act (as in

1 effect on December 31, 1995) or similar provisions are  
2 in effect.”.

3 (8) Section 595 is hereby repealed.

4 (9) Section 596 is hereby repealed.

5 (10) Subsection (a) of section 860E is amended—

6 (A) by striking “Except as provided in para-  
7 graph (2), the” in paragraph (1) and inserting  
8 “The”.

9 (B) by striking paragraphs (2) and (4) and re-  
10 designating paragraphs (3) and (5) as paragraphs  
11 (2) and (3), respectively, and

12 (C) by striking in paragraph (2) (as so redesign-  
13 nated) all that follows “subsection” and inserting a  
14 period.

15 (11) Paragraph (3) of section 992(d) is amended by  
16 striking “or 593”.

17 (12) Section 1038 is amended by striking subsection  
18 (f).

19 (13) Clause (ii) of section 1042(c)(4)(B) is amended  
20 by striking “or 593”.

21 (14) Subsection (c) of section 1277 is amended by  
22 striking “or to which section 593 applies”.

23 (15) Subparagraph (B) of section 1361(b)(2) is  
24 amended by striking “or to which section 593 applies”.

1       (16) The table of sections for part II of subchapter  
2 H of chapter 1 is amended by striking the items relating  
3 to sections 595 and 596.

4       (c) EFFECTIVE DATES.—

5           (1) IN GENERAL.—Except as otherwise pro-  
6 vided in this subsection, the amendments made by  
7 this section shall apply to taxable years beginning  
8 after December 31, 1995.

9           (2) SUBSECTION (b)(7).—The amendments  
10 made by subsection (b)(7) shall not apply to any dis-  
11 tribution with respect to preferred stock if—

12               (A) such stock is outstanding at all times  
13 after October 31, 1995, and before the distribu-  
14 tion, and

15               (B) such distribution is made before the  
16 date which is 1 year after the date of the enact-  
17 ment of this Act (or, in the case of stock which  
18 may be redeemed, if later, the date which is 30  
19 days after the earliest date that such stock may  
20 be redeemed).

21           (3) SUBSECTION (b)(8).—The amendment  
22 made by subsection (b)(8) shall apply to property  
23 acquired in taxable years beginning after December  
24 31, 1995.

1           (4) SUBSECTION (b)(10).—The amendments  
2       made by subsection (b)(10) shall not apply to any  
3       residual interest held by a taxpayer if such interest  
4       has been held by such taxpayer at all times after Oc-  
5       tober 31, 1995.

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