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104TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
104–280

SEVEN-YEAR BALANCED BUDGET RECONCILIATION ACT OF 1995

R E P O R T

OF THE

COMMITTEE ON THE BUDGET
HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 2491

A BILL TO PROVIDE FOR RECONCILIATION PURSUANT TO SECTION 105 OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 1996

together with

MINORITY, ADDITIONAL, AND DISSENTING VIEWS

VOLUME II

TITLES XIII–XX

OCTOBER 17, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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OCTOBER 17, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. KASICH, from the Committee on the Budget,

submitted the following

REPORT

together with

MINORITY, ADDITIONAL, AND DISSENTING VIEWS

[To accompany H.R. 2491]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Budget, to whom reconciliation recommendations were submitted pursuant to section 105 of House Concurrent Resolution 67, the concurrent resolution on the budget for fiscal year 1996, having considered the same, report the bill without recommendation.

TITLE XIII—COMMITTEE ON WAYS AND MEANS—REVENUE RECONCILIATION

SEC. 13001. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This title may be cited as the "Revenue Reconciliation Act of 1995".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

PART IX—MODIFICATIONS TO PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX

PART X—MODIFICATIONS OF RULES RELATING TO SUMMONSES

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PART VI—REFORMS RELATING TO GAMING ACTIVITIES

Subtitle A—Extension of Expiring Provisions, Etc.

PART I—EXTENSIONS THROUGH DECEMBER 31, 1997

SEC. 13101. WORK OPPORTUNITY TAX CREDIT.

(a) AMOUNT OF CREDIT.—Subsection (a) of section 51 is amended by striking "40 percent" and inserting "35 percent".

(b) MEMBERS OF TARGETED GROUPS.—Subsection (d) of section 51 is amended to read as follows:

"(d) MEMBERS OF TARGETED GROUPS.—For purposes of this subpart—

"(1) IN GENERAL.—An individual is a member of a targeted group if such individual is—

"(A) a qualified AFDC recipient,

"(B) a qualified ex-felon,

"(C) a high-risk youth,

"(D) a vocational rehabilitation referral, or

"(E) a qualified summer youth employee.

"(2) QUALIFIED AFDC RECIPIENT.—

"(A) IN GENERAL.—The term 'qualified AFDC recipient' means any individual who is certified by the designated local agency as being a member of a family receiving assistance under an AFDC program for at least a 9-month period ending during the 9-month period ending on the hiring date.

"(B) AFDC PROGRAM.—For purposes of this paragraph, the term 'AFDC program' means any program providing aid under a State plan approved under part A of title IV of the Social Security Act (relating to aid to families with dependent children) and any successor of such program.

"(C) SPECIAL RULES FOR VETERANS.—In the case of a veteran, subparagraph (A) shall be applied by substituting '12-month' for '9-month' the second place it appears.

"(D) VETERAN.—For purposes of subparagraph (C), the term 'veteran' means any individual who is certified by the designated local agency as—

"(i)(I) having served on active duty (other than active duty for training) in the Armed Forces of the United States for a period of more than 180 days, or

"(II) having been discharged or released from active duty in the Armed Forces of the United States for a service-connected disability, and

"(ii) not having any day during the 60-day period ending on the hiring date which was a day of extended active duty in the Armed Forces of the United States.

For purposes of clause (ii), the term 'extended active duty' means a period of more than 90 days during which the individual was on active duty (other than active duty for training).

"(3) QUALIFIED EX-FELON.—The term 'qualified ex-felon' means any individual who is certified by the designated local agency—

"(A) as having been convicted of a felony under any statute of the United States or any State,

"(B) as having a hiring date which is not more than 1 year after the last date on which such individual was so convicted or was released from prison, and

"(C) as being a member of a family which had an income during the 6 months immediately preceding the earlier of the month in which such income determination occurs or the month in which the hiring date occurs, which, on an annual basis, would be 70 percent or less of the Bureau of Labor Statistics lower living standard.

Any determination under subparagraph (C) shall be valid for the 45-day period beginning on the date such determination is made.

"(4) HIGH-RISK YOUTH.—

"(A) IN GENERAL.—The term 'high-risk youth' means any individual who is certified by the designated local agency—

"(i) as having attained age 18 but not age 25 on the hiring date, and

"(ii) as having his principal place of abode within an empowerment zone or enterprise community.

"(B) YOUTH MUST CONTINUE TO RESIDE IN ZONE.—In the case of a high-risk youth, the term 'qualified wages' shall not include wages paid or incurred for services performed while such youth's principal place of abode is outside an empowerment zone or enterprise community.

"(5) VOCATIONAL REHABILITATION REFERRAL.—The term 'vocational rehabilitation referral' means any individual who is certified by the designated local agency as—

"(A) having a physical or mental disability which, for such individual, constitutes or results in a substantial handicap to employment, and

"(B) having been referred to the employer upon completion of (or while receiving) rehabilitative services pursuant to—

"(i) an individualized written rehabilitation plan under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973, or

"(ii) a program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code.

"(6) QUALIFIED SUMMER YOUTH EMPLOYEE.—

"(A) IN GENERAL.—The term 'qualified summer youth employee' means any individual—

"(i) who performs services for the employer between May 1 and September 15,

"(ii) who is certified by the designated local agency as having attained age 16 but not 18 on the hiring date (or if later, on May 1 of the calendar year involved),

"(iii) who has not been an employee of the employer during any period prior to the 90-day period described in subparagraph (B)(i), and

"(iv) who is certified by the designated local agency as having his principal place of abode within an empowerment zone or enterprise community.

"(B) SPECIAL RULES FOR DETERMINING AMOUNT OF CREDIT.—For purposes of applying this subpart to wages paid or incurred to any qualified summer youth employee—

"(i) subsection (b)(2) shall be applied by substituting 'any 90-day period between May 1 and September 15' for 'the 1-year period beginning with the day the individual begins work for the employer', and

"(ii) subsection (b)(3) shall be applied by substituting '$3,000' for '$6,000'.

The preceding sentence shall not apply to an individual who, with respect to the same employer, is certified as a member of another targeted group after such individual has been a qualified summer youth employee.

"(C) YOUTH MUST CONTINUE TO RESIDE IN ZONE.—Paragraph (4)(B) shall apply for purposes of this paragraph.

"(7) HIRING DATE.—The term 'hiring date' means the day the individual is hired by the employer.

"(8) DESIGNATED LOCAL AGENCY.—The term 'designated local agency' means a State employment security agency established in accordance with the Act of June 6, 1933, as amended (29 U.S.C. 49-49n).

"(9) SPECIAL RULES FOR CERTIFICATIONS.—

"(A) IN GENERAL.—An individual shall not be treated as a member of a targeted group unless—

"(i) on or before the day on which such individual begins work for the employer, the employer has received a certification from a designated local agency that such individual is a member of a targeted group, or

"(ii)(I) on or before the day the individual is offered employment with the employer, a pre-screening notice is completed with respect to such individual, and

"(II) not later than the 14th day after the individual begins work for the employer, the employer submits such notice to the designated local agency as part of a written request for such a certification from such agency.

For purposes of this paragraph, the term 'pre-screening notice' means a document (in such form as the Secretary shall prescribe) which is signed by the employer and the individual under penalties of perjury and which contains information provided by the individual on the basis of which the employer believes that the individual is a member of a targeted group.

"(B) INCORRECT CERTIFICATIONS.—If—

"(i) an individual has been certified by a designated local agency as a member of a targeted group, and

"(ii) such certification is incorrect because it was based on false information provided by such individual,

the certification shall be revoked and wages paid by the employer after the date on which notice of revocation is received by the employer shall not be treated as qualified wages.

"(C) EXPLANATION OF DENIAL OF REQUEST.—If a designated local agency denies a request for certification of membership in a targeted group, such agency shall provide to the person making such request a written explanation of the reasons for such denial."

(c) MINIMUM EMPLOYMENT PERIOD.—Paragraph (3) of section 51(i) is amended to read as follows:

"(3) INDIVIDUALS NOT MEETING MINIMUM EMPLOYMENT PERIOD.—No wages shall be taken into account under subsection (a) with respect to any individual unless such individual either—

"(A) is employed by the employer at least 180 days (20 days in the case of a qualified summer youth employee), or

"(B) has completed at least 500 hours (120 hours in the case of a qualified summer youth employee) of services performed for the employer."

(d) DEFINITION OF WAGES.—Subsection (c) of section 51 is amended by striking paragraph (3).

(e) TERMINATION.—Paragraph (4) of section 51(c) is amended to read as follows:

"(3) TERMINATION.—The term 'wages' shall not include any amount paid or incurred to an individual who begins work for the employer—

"(A) after December 31, 1994, and before January 1, 1996, or

"(B) after December 31, 1997."

(f) REDESIGNATION OF CREDIT.—

(1) Sections 38(b)(2) and 51(a) are each amended by striking "targeted jobs credit" and inserting "work opportunity credit".

(2) The subpart heading for subpart F of part IV of subchapter A of chapter 1 is amended by striking "**Targeted Jobs Credit**" and inserting "**Work Opportunity Credit**".

(3) The table of subparts for such part IV is amended by striking "targeted jobs credit" and inserting "work opportunity credit".

(g) BUSINESS AWARENESS PROGRAM.—The Secretary of Labor shall implement a program to encourage small businesses to use the services of local agencies to identify individuals who qualify to be certified as members of targeted groups (as defined in section 51 of the Internal Revenue Code of 1986, as amended by this section). Such Secretary, and the heads of other Federal agencies, shall make every effort to encourage small businesses to benefit from the credit allowable under such section by simplifying procedures to the extent possible.

(h) TECHNICAL AMENDMENTS.—

(1) Paragraph (1) of section 51(c) is amended by striking ", subsection (d)(8)(D),".

(2) Paragraph (3) of section 51(i) is amended by striking "(d)(12)" each place it appears and inserting "(d)(6)".

(i) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after December 31, 1995.

SEC. 13102. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE PROGRAMS.

(a) EXTENSION.—Subsection (d) of section 127 (relating to educational assistance programs) is amended by striking "December 31, 1994" and inserting "December 31, 1997".

(b) LIMITATION TO EDUCATION BELOW GRADUATE LEVEL.—The last sentence of section 127(c)(1) is amended by inserting before the period "or at the graduate level".

(c) EFFECTIVE DATES.—

(1) EXTENSION.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1994.

(2) LIMITATION.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1995.

SEC. 13103. RESEARCH CREDIT.

(a) IN GENERAL.—Subsection (h) of section 41 (relating to credit for research activities) is amended—

(1) by striking "June 30, 1995" each place it appears and inserting "December 31, 1997", and

(2) by striking "July 1, 1995" each place it appears and inserting "January 1, 1998".

(b) BASE AMOUNT FOR START-UP COMPANIES.—Clause (i) of section 41(c)(3)(B) (relating to start-up companies) is amended to read as follows:

"(i) TAXPAYERS TO WHICH SUBPARAGRAPH APPLIES.—The fixed-base percentage shall be determined under this subparagraph if—

"(I) the first taxable year in which a taxpayer had both gross receipts and qualified research expenses begins after December 31, 1983, or

"(II) there are fewer than 3 taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses."

(c) ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—Subsection (c) of section 41 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—

"(A) IN GENERAL.—At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to the sum of—

"(i) 1.65 percent of so much of the qualified research expenses for the taxable year as exceeds 1 percent of the average described in subsection (c)(1)(B) but does not exceed 1.5 percent of such average,

"(ii) 2.2 percent of so much of such expenses as exceeds 1.5 percent of such average but does not exceed 2 percent of such average, and

"(iii) 2.75 percent of so much of such expenses as exceeds 2 percent of such average.

"(B) ELECTION.—An election under this paragraph may be made only for the first taxable year of the taxpayer beginning after June 30, 1995. Such an election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary."

(d) INCREASED CREDIT FOR CONTRACT RESEARCH EXPENSES WITH RESPECT TO CERTAIN RESEARCH CONSORTIA.—Paragraph (3) of section 41(b) is amended by adding at the end the following new subparagraph:

"(C) AMOUNTS PAID TO CERTAIN RESEARCH CONSORTIA.—

"(i) IN GENERAL.—Subparagraph (A) shall be applied by substituting '75 percent' for '65 percent' with respect to amounts paid or incurred by the taxpayer to a qualified research consortium for qualified research.

"(ii) QUALIFIED RESEARCH CONSORTIUM.—The term 'qualified research consortium' means any organization described in subsection (e)(6)(B) if—

"(I) at least 15 unrelated taxpayers paid (during the calendar year in which the taxable year of the taxpayer begins) amounts to such organization for qualified research,

"(II) no 3 persons paid during such calendar year more than 50 percent of the total amounts paid during such calendar year for qualified research, and

"(III) no person contributed more than 20 percent of such total amounts.

For purposes of subclause (I), all persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related taxpayers."

(e) CONFORMING AMENDMENT.—Subparagraph (D) of section 28(b)(1) is amended by striking "June 30, 1995" and inserting "December 31, 1997".

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years ending after June 30, 1995.

(2) SUBSECTIONS (c) AND (d).—The amendments made by subsections (c) and (d) shall apply to taxable years beginning after June 30, 1995.

SEC. 13104. CONTRIBUTIONS OF STOCK TO PRIVATE FOUNDATIONS.

(a) IN GENERAL.—Subparagraph (D) of section 170(e)(5) is amended by striking "December 31, 1994" and inserting "December 31, 1997".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after December 31, 1994.

SEC. 13105. CREDIT FOR CLINICAL TESTING EXPENSES.

(a) IN GENERAL.—Subsection (e) of section 28 is amended by striking "December 31, 1994" and inserting "December 31, 1997".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after December 31, 1994.

PART II—PERMANENT EXTENSION OF FUTA EXEMPTION FOR ALIEN AGRICULTURAL WORKERS

SEC. 13106. FUTA EXEMPTION FOR ALIEN AGRICULTURAL WORKERS.

(a) IN GENERAL.—Subparagraph (B) of section 3306(c)(1) (defining employment) is amended by striking "before January 1, 1995,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services performed after December 31, 1994.

PART III—COMMERCIAL AVIATION FUEL

SEC. 13111. DELAY OF SCHEDULED INCREASE IN TAX ON FUEL USED IN COMMERCIAL AVIATION.

(a) 2-YEAR DELAY.—Sections 4092(b)(2), 6421(f)(2)(B), and 6427(l)(4)(B) are each amended by striking "September 30, 1995" and inserting "September 30, 1997".

(b) CONFORMING AMENDMENT.—Section 13245 of the Omnibus Budget Reconciliation Act of 1993 is hereby repealed.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on September 30, 1995.

(2) CROSS REFERENCE.—

For refund of tax paid on commercial aviation fuel before the date of the enactment of this Act, see section 6427(l) of the Internal Revenue Code of 1986.

(d) FLOOR STOCKS TAX.—

(1) IMPOSITION OF TAX.—In the case of commercial aviation fuel which is held by any person on October 1, 1997, there is hereby imposed a floor stocks tax equal to 4.3 cents per gallon.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding aviation fuel on October 1, 1997, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before April 30, 1998.

(3) DEFINITIONS.—For purposes of this subsection—

(A) HELD BY A PERSON.—Aviation fuel shall be considered as "held by a person" if title thereto has passed to such person (whether or not delivery to the person has been made).

(B) COMMERCIAL AVIATION FUEL.—The term "commercial aviation fuel" means aviation fuel (as defined in section 4093 of such Code) which is held on October 1, 1997, for sale or use in commercial aviation (as defined in section 4092(b) of such Code).

(C) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to aviation fuel held by any person exclusively for any use for which a credit or refund of the entire tax imposed by section 4091 of such Code (other than the rate imposed by section 4091(b)(2) of such Code) is allowable for aviation fuel so used.

(5) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on aviation fuel held on October 1, 1997, by any person if the aggregate amount of commercial aviation fuel held by such person on such date does not exceed 2,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (4).

(C) CONTROLLED GROUPS.—For purposes of this paragraph—

(i) CORPORATIONS.—

(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

(II) CONTROLLED GROUP.—The term "controlled group" has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in such subsection.

(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4091 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4091.

(f) STUDY.—The Secretary of the Treasury or his delegate shall, in consultation with the Secretary of Transportation, conduct a study of the Federal excise tax burdens on each of the various modes of transportation and the benefits provided to each such mode from revenues derived from such excise taxes. The results of such study shall be submitted not later than June 30, 1996, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

PART IV—EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXCISE TAXES

SEC. 13116. EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXCISE TAXES.

(a) FUEL TAX.—

(1) Subparagraph (A) of section 4091(b)(3) is amended by striking "January 1, 1996" and inserting "October 1, 1996".

(2) Paragraph (2) of section 4081(d), as amended by section 14721 of this Act, is amended by striking "January 1, 1996" and inserting "October 1, 1996".

(b) TICKET TAXES.—Sections 4261(g) and 4271(d) are each amended by striking "January 1, 1996" and inserting "October 1, 1996".

(c) TRANSFER TO AIRPORT AND AIRWAY TRUST FUND.—

(1) Subsection (b) of section 9502 is amended by striking "January 1, 1996" each place it appears and inserting "October 1, 1996".

(2) Paragraph (3) of section 9502(f) is amended by striking "December 31, 1995" and inserting "September 30, 1996".

Subtitle B—Medical Savings Accounts

SEC. 13201. MEDICAL SAVINGS ACCOUNTS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 220 as section 221 and by inserting after section 219 the following new section:

"SEC. 220. MEDICAL SAVINGS ACCOUNTS.

"(a) DEDUCTION ALLOWED.—In the case of an individual who is an eligible individual for any month during the taxable year, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate amount paid in cash during such taxable year by such individual to a medical savings account of such individual.

"(b) LIMITATIONS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amount allowable as a deduction under subsection (a) to an individual for the taxable year shall not exceed the lesser of—

"(A) $2,500, or

"(B) the deductible under the catastrophic health plan covering such individual.

If the catastrophic health plan covering such individual provides coverage for any other eligible individual who is the spouse or any dependent (as defined in section 152) of the taxpayer, subparagraph (A) shall be applied by substituting '$5,000' for '$2,500'. The preceding sentence shall not apply if the spouse or any dependent (as so defined) of such individual is covered under any other catastrophic health plan.

"(2) SPECIAL RULE FOR MARRIED INDIVIDUALS.—

"(A) IN GENERAL.—This subsection shall be applied separately for each married individual.

"(B) SPECIAL RULE.—If individuals who are married to each other are covered under the same catastrophic health plan, then the amounts applicable under subparagraphs (A) and (B) of paragraph (1) shall be divided equally between them unless they agree on a different division.

"(3) COORDINATION WITH EXCLUSION FOR EMPLOYER CONTRIBUTIONS.—No deduction shall be allowed under this section for any amount paid for any taxable year to a medical savings account of an individual if—

"(A) any amount is paid to any medical savings account of such individual which is excludable from gross income under section 106(b) for such year, or

"(B) in a case described in paragraph (2), any amount is paid to any medical savings account of either spouse which is so excludable for such year.

"(4) PRORATION OF LIMITATION.—

"(A) IN GENERAL.—The limitation under paragraph (1) shall be the sum of the monthly limitations for months during the taxable year that the individual is an eligible individual if—

"(i) such individual is not an eligible individual for all months of the taxable year,

"(ii) the deductible under the catastrophic health plan covering such individual is not the same throughout such taxable year, or

"(iii) such limitation is determined using the next to the last sentence of paragraph (1) for some but not all months during such taxable year.

"(B) MONTHLY LIMITATION.—The monthly limitation for any month shall be an amount equal to 1⁄12 of the limitation which would (but for this paragraph and paragraph (3)) be determined under paragraph (1) if the facts and circumstances as of the first day of such month that such individual is covered under a catastrophic health plan were true for the entire taxable year.

"(5) DENIAL OF DEDUCTION TO DEPENDENTS.—No deduction shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

"(c) DEFINITIONS.—For purposes of this section—

"(1) ELIGIBLE INDIVIDUAL.—

"(A) IN GENERAL.—The term 'eligible individual' means, with respect to any month, any individual—

"(i) who is covered under a catastrophic health plan at any time during such month, and

"(ii) who is not, while covered under a catastrophic health plan, covered under any health plan—

"(I) which is not a catastrophic health plan, and

"(II) which provides coverage for any benefit which is covered under the catastrophic health plan.

"(B) CERTAIN COVERAGE DISREGARDED.—Subparagraph (A)(ii) shall be applied without regard to—

"(i) coverage for any benefit provided by permitted insurance, and

"(ii) coverage (whether through insurance or otherwise) for accidents, dental care, vision care, or long-term care.

"(2) CATASTROPHIC HEALTH PLAN.—The term 'catastrophic health plan' means any health plan which provides no compensation for an individual's expenses covered by the plan for any calendar year to the extent such expenses for such calendar year do not exceed $1,500 ($3,000 if the catastrophic health plan covering the taxpayer provides coverage for more than 1 individual) or such higher amounts as may be specified by the plan.

"(3) PERMITTED INSURANCE.—The term 'permitted insurance' means—

"(A) Medicare supplemental insurance,

"(B) insurance if substantially all of the coverage provided under such insurance relates to—

"(i) liabilities incurred under workers' compensation laws,

"(ii) tort liabilities,

"(iii) liabilities relating to ownership or use of property,

"(iv) credit insurance, or

"(v) such other similar liabilities as the Secretary may specify by regulations,

"(C) insurance for a specified disease or illness, and

"(D) insurance paying a fixed amount per day (or other period) of hospitalization.

"(d) MEDICAL SAVINGS ACCOUNT.—For purposes of this section—

"(1) MEDICAL SAVINGS ACCOUNT.—The term 'medical savings account' means a trust created or organized in the United States exclusively for the purpose of paying the qualified medical expenses of the account holder, but only if the written governing instrument creating the trust meets the following requirements:

"(A) Except in the case of a rollover contribution described in subsection (f)(4), no contribution will be accepted unless it is in cash.

"(B) The trustee is a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

"(C) No part of the trust assets will be invested in life insurance contracts.

"(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

"(E) The interest of an individual in the balance in his account is nonforfeitable.

"(2) QUALIFIED MEDICAL EXPENSES.—

"(A) IN GENERAL.—The term 'qualified medical expenses' means, with respect to an account holder, amounts paid by such holder—

"(i) for medical care (as defined in section 213(d)) for such individual, the spouse of such individual, and any dependent (as defined in section 152) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise, or

"(ii) for long-term care insurance for such individual, spouse, or dependent.

"(B) HEALTH INSURANCE MAY NOT BE PURCHASED FROM ACCOUNT.—Subparagraph (A)(i) shall not apply to any payment for insurance.

"(3) ACCOUNT HOLDER.—The term 'account holder' means the individual on whose behalf the medical savings account was established.

"(4) CERTAIN RULES TO APPLY.—Rules similar to the following rules shall apply for purposes of this section:

"(A) Section 219(d)(2) (relating to no deduction for rollovers).

"(B) Section 219(f)(3) (relating to time when contributions deemed made).

"(C) Except as provided in section 106(b), section 219(f)(5) (relating to employer payments).

"(D) Section 408(g) (relating to community property laws).

"(E) Section 408(h) (relating to custodial accounts).

"(e) TAX TREATMENT OF ACCOUNTS.—

"(1) ACCOUNT TAXED AS GRANTOR TRUST.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the account holder of a medical savings account shall be treated for purposes of this title as the owner of such account and shall be subject to tax thereon in accordance with subpart E of part I of subchapter J of this chapter (relating to grantors and others treated as substantial owners).

"(B) TREATMENT OF CAPITAL LOSSES.—With respect to assets held in a medical savings account, any capital loss for a taxable year from the sale or exchange of such an asset shall be allowed only to the extent of capital gains from such assets for such taxable year. Any capital loss which is disallowed under the preceding sentence shall be treated as a capital loss from the sale or exchange of such an asset in the next taxable year. For purposes of this subparagraph, all medical savings accounts of the account holder shall be treated as 1 account.

"(2) ACCOUNT ASSETS TREATED AS DISTRIBUTED IN THE CASE OF PROHIBITED TRANSACTIONS OR ACCOUNT PLEDGED AS SECURITY FOR LOAN.—Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to medical savings accounts, and any amount treated as distributed under such rules shall be treated as not used to pay qualified medical expenses.

"(3) TREATMENT OF ACCOUNT AFTER DEATH OF ACCOUNT HOLDER.—

"(A) IN GENERAL.—A trust shall not constitute a medical savings account unless the written governing instrument provides that, if the account holder dies while there is a balance in the account, the entire balance of the account holder will be distributed within 5 years after the death of the account holder.

"(B) EXCEPTION WHERE SPOUSE BECOMES ACCOUNT HOLDER.—Subparagraph (A) shall not apply if the account is payable to (or for the benefit of) the surviving spouse of the decedent.

"(f) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) INCLUSION OF AMOUNTS NOT USED FOR QUALIFIED MEDICAL EXPENSES.—

"(A) IN GENERAL.—No amount shall be included in the gross income of the account holder by reason of a payment or distribution from a medical savings account which is used exclusively to pay the qualified medical expenses of the account holder. Any amount paid or distributed from a medical savings account which is not so used shall be included in the gross income of such holder to the extent such amount does not exceed the excess of—

"(i) the aggregate contributions to such account which were allowed as a deduction under this section or which were excluded under section 106(b), over

"(ii) the aggregate prior payments or distributions from such account which were includible in gross income under this paragraph.

"(B) SPECIAL RULES.—For purposes of subparagraph (A)—

"(i) all medical savings accounts of the account holder shall be treated as 1 account,

"(ii) all payments and distributions during any taxable year shall be treated as 1 distribution, and

"(iii) any distribution of property shall be taken into account at its fair market value on the date of the distribution.

"(2) PENALTY FOR DISTRIBUTIONS NOT USED FOR QUALIFIED MEDICAL EXPENSES.—

"(A) IN GENERAL.—The tax imposed by this chapter for any taxable year in which there is a payment or distribution from a medical savings account which is not used exclusively to pay the qualified medical expenses of the account holder shall be increased by 10 percent of the amount of such payment or distribution which is includible in gross income under paragraph (1).

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply if the payment or distribution is made on or after the date the account holder—

"(i) attains age 59 ½,

"(ii) becomes disabled within the meaning of section 72(m)(7), or

"(iii) dies.

"(3) WITHDRAWAL OF EXCESS CONTRIBUTIONS.—Paragraph (1) shall not apply to the distribution of any contribution paid during a taxable year to a medical savings account if—

"(A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,

"(B) no deduction is allowed under this section with respect to such contribution, and

"(C) such distribution is accompanied by the amount of net income attributable to such contribution.

In the case of such a distribution, for purposes of section 61, any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such contribution is made.

"(4) ROLLOVERS.—Paragraph (1) shall not apply to any amount paid or distributed out of a medical savings account to the account holder if the entire amount received (including money and any other property) is paid into another medical savings account for the benefit of such holder not later than the 60th day after the day on which he received the payment or distribution.

"(5) COORDINATION WITH MEDICAL EXPENSE DEDUCTION.—For purposes of section 213, any payment or distribution out of a medical savings account for qualified medical expenses shall not be treated as an expense paid for medical care to the extent of the amount of such payment or distribution which is excludable from gross income solely by reason of paragraph (1)(A).

"(g) COST-OF-LIVING ADJUSTMENT.—

"(1) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1996, each dollar amount in subsection (b)(1) or in subsection (c)(2) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the medical care cost adjustment for such calendar year.

If any increase under the preceding sentence is not a multiple of $50, such increase shall be rounded to the nearest multiple of $50.

"(2) MEDICAL CARE COST ADJUSTMENT.—For purposes of paragraph (1), the medical care cost adjustment for any calendar year is the percentage (if any) by which—

"(A) the medical care component of the Consumer Price Index (as defined in section 1(f)(5)) for August of the preceding calendar year, exceeds

"(B) such component for August of 1995.

"(h) REPORTS.—The trustee of a medical savings account shall make such reports regarding such account to the Secretary and to the account holder with respect to contributions, distributions, and such other matters as the Secretary may require under regulations. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations."

(b) DEDUCTION ALLOWED WHETHER OR NOT INDIVIDUAL ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 is amended by inserting after paragraph (15) the following new paragraph:

"(16) MEDICAL SAVINGS ACCOUNTS.—The deduction allowed by section 220."

(c) EXCLUSIONS FOR EMPLOYER CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.—

(1) EXCLUSION FROM INCOME TAX.—The text of section 106 (relating to contributions by employer to accident and health plans) is amended to read as follows:

"(a) GENERAL RULE.—Gross income of an employee does not include employer-provided coverage under an accident or health plan.

"(b) CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.—

"(1) IN GENERAL.—In the case of an employee who is an eligible individual, gross income does not include amounts contributed by such employee's employer to any medical savings account of such employee.

"(2) COORDINATION WITH DEDUCTION LIMITATION.—The amount excluded from the gross income of an employee under this subsection for any taxable year shall not exceed the limitation under section 220(b)(1) (determined without regard to this subsection) which is applicable to such employee for such taxable year."

"(3) NO CONSTRUCTIVE RECEIPT.—No amount shall be included in the gross income of any employee solely because the employee may choose between the contributions referred to in paragraph (1) and employer contributions to another health plan of the employer.

"(4) SPECIAL RULE FOR DEDUCTION OF EMPLOYER CONTRIBUTIONS.—Any employer contribution to a medical savings account, if otherwise allowable as a deduction under this chapter, shall be allowed only for the taxable year in which paid.

"(5) DEFINITIONS.—For purposes of this subsection, the terms 'eligible individual' and 'medical savings account' have the respective meanings given to such terms by section 220."

(2) EXCLUSION FROM EMPLOYMENT TAXES.—

(A) SOCIAL SECURITY TAXES.—

(i) Subsection (a) of section 3121 is amended by striking "or" at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting "; or", and by inserting after paragraph (21) the following new paragraph:

"(22) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b)."

(ii) Subsection (a) of section 209 of the Social Security Act is amended by striking "or" at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting "; or", and by inserting after paragraph (18) the following new paragraph:

"(19) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b) of the Internal Revenue Code of 1986."

(B) RAILROAD RETIREMENT TAX.—Subsection (e) of section 3231 is amended by adding at the end the following new paragraph:

"(10) MEDICAL SAVINGS ACCOUNT CONTRIBUTIONS.—The term 'compensation' shall not include any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b)."

(C) UNEMPLOYMENT TAX.—Subsection (b) of section 3306 is amended by striking "or" at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting "; or", and by inserting after paragraph (16) the following new paragraph:

"(17) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b)."

(D) WITHHOLDING TAX.—Subsection (a) of section 3401 is amended by striking "or" at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting "; or", and by inserting after paragraph (20) the following new paragraph:

"(21) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b)."

(d) MEDICAL SAVINGS ACCOUNT CONTRIBUTIONS NOT AVAILABLE UNDER CAFETERIA PLANS.—Subsection (f) of section 125 is amended by inserting "106(b)," before "117".

(e) TAX ON PROHIBITED TRANSACTIONS.—Section 4975 (relating to tax on prohibited transactions) is amended—

(1) by adding at the end of subsection (c) the following new paragraph:

"(4) SPECIAL RULE FOR MEDICAL SAVINGS ACCOUNTS.—An individual for whose benefit a medical savings account (within the meaning of section 220(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a medical savings account by reason of the application of section 220(e)(2) to such account.", and

(2) by inserting "or a medical savings account described in section 220(d)" in subsection (e)(1) after "described in section 408(a)".

(f) FAILURE TO PROVIDE REPORTS ON MEDICAL SAVINGS ACCOUNTS.—Section 6693 (relating to failure to provide reports on individual retirement accounts or annuities) is amended—

(1) by inserting "or on medical savings accounts" after "annuities" in the heading of such section, and

(2) by adding at the end of subsection (a) the following: "The person required by section 220(h) to file a report regarding a medical savings account at the time and in the manner required by such section shall pay a penalty of $50

for each failure to so file unless it is shown that such failure is due to reasonable cause.''

(g) CLERICAL AMENDMENTS.—

(1) The table of sections for part VII of subchapter B of chapter 1 is amended by striking the last item and inserting the following:

''Sec. 220. Medical savings accounts.
''Sec. 221. Cross reference.''

(2) The table of sections for subchapter B of chapter 68 is amended by inserting ''or on medical savings accounts'' after ''annuities'' in the item relating to section 6693.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

Subtitle C—Pickle-Johnson Taxpayer Bill of Rights 2

PART I—TAXPAYER ADVOCATE

SEC. 13301. ESTABLISHMENT OF POSITION OF TAXPAYER ADVOCATE WITHIN INTERNAL REVENUE SERVICE.

(a) GENERAL RULE.—Section 7802 (relating to Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)) is amended by adding at the end the following new subsection:

''(d) OFFICE OF TAXPAYER ADVOCATE.—

''(1) IN GENERAL.—There is established in the Internal Revenue Service an office to be known as the 'Office of the Taxpayer Advocate'. Such office shall be under the supervision and direction of an official to be known as the 'Taxpayer Advocate' who shall be appointed by and report directly to the Commissioner of Internal Revenue. The Taxpayer Advocate shall be entitled to compensation at the same rate as the highest level official reporting directly to the Deputy Commissioner of the Internal Revenue Service.

''(2) FUNCTIONS OF OFFICE.—

''(A) IN GENERAL.—It shall be the function of the Office of Taxpayer Advocate to—

''(i) assist taxpayers in resolving problems with the Internal Revenue Service,

''(ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service,

''(iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii), and

''(iv) identify potential legislative changes which may be appropriate to mitigate such problems.

''(B) ANNUAL REPORTS.—

''(i) OBJECTIVES.—Not later than June 30 of each calendar year after 1995, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Taxpayer Advocate for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

''(ii) ACTIVITIES.—Not later than December 31 of each calendar year after 1995, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the activities of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—

''(I) identify the initiatives the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness,

''(II) contain recommendations received from individuals with the authority to issue Taxpayer Assistance Orders under section 7811, "(III) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems,

"(IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action,

"(V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory,

"(VI) contain an inventory of the items described in subclauses (II) and (III) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Internal Revenue Service official who is responsible for such inaction,

"(VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner, as specified under section 7811(b),

"(VIII) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers,

"(IX) describe the extent to which regional problem resolution officers participate in the selection and evaluation of local problem resolution officers, and

"(X) include such other information as the Taxpayer Advocate may deem advisable.

"(iii) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subparagraph shall be provided directly to the Committees referred to in clauses (i) and (ii) without any prior review or comment from the Commissioner, the Secretary of the Treasury, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.

"(3) RESPONSIBILITIES OF COMMISSIONER.—The Commissioner of Internal Revenue shall establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the Taxpayer Advocate within 3 months after submission to the Commissioner."

(b) CONFORMING AMENDMENTS.—

(1) Section 7811 (relating to Taxpayer Assistance Orders) is amended—

(A) by striking "the Office of Ombudsman" in subsection (a) and inserting "the Office of the Taxpayer Advocate", and

(B) by striking "Ombudsman" each place it appears (including in the headings of subsections (e) and (f)) and inserting "Taxpayer Advocate".

(2) The heading for section 7802 is amended to read as follows:

"SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; ASSISTANT COMMISSIONERS; TAXPAYER ADVOCATE."

(3) The table of sections for subchapter A of chapter 80 is amended by striking the item relating to section 7802 and inserting the following new item:

"Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioners; Taxpayer Advocate."

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

SEC. 13302. EXPANSION OF AUTHORITY TO ISSUE TAXPAYER ASSISTANCE ORDERS.

(a) TERMS OF ORDERS.—Subsection (b) of section 7811 (relating to terms of Taxpayer Assistance Orders) is amended—

(1) by inserting "within a specified time period" after "the Secretary", and

(2) by inserting "take any action as permitted by law," after "cease any action,".

(b) LIMITATION ON AUTHORITY TO MODIFY OR RESCIND.—Section 7811(c) (relating to authority to modify or rescind) is amended to read as follows:

"(c) AUTHORITY TO MODIFY OR RESCIND.—Any Taxpayer Assistance Order issued by the Taxpayer Advocate under this section may be modified or rescinded—

"(1) only by the Taxpayer Advocate, the Commissioner of Internal Revenue, the Deputy Commissioner of Internal Revenue, or a regional problem resolution officer, and

"(2) only if a written explanation of the reasons for the modification or rescission is provided to the Taxpayer Advocate."

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

PART II—MODIFICATIONS TO INSTALLMENT AGREEMENT PROVISIONS

SEC. 13306. NOTIFICATION OF REASONS FOR TERMINATION OF INSTALLMENT AGREEMENTS.

(a) TERMINATIONS.—Subsection (b) of section 6159 (relating to extent to which agreements remain in effect) is amended by adding at the end the following new paragraph:

"(5) NOTICE REQUIREMENTS.—The Secretary may not take any action under paragraph (2), (3), or (4) unless—

"(A) a notice of such action is provided to the taxpayer not later than the day 30 days before the date of such action, and

"(B) such notice includes an explanation why the Secretary intends to take such action.

The preceding sentence shall not apply in any case in which the Secretary believes that collection of any tax to which an agreement under this section relates is in jeopardy."

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 6159(b) is amended to read as follows:

"(3) SUBSEQUENT CHANGE IN FINANCIAL CONDITIONS.—If the Secretary makes a determination that the financial condition of a taxpayer with whom the Secretary has entered into an agreement under subsection (a) has significantly changed, the Secretary may alter, modify, or terminate such agreement."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date 6 months after the date of the enactment of this Act.

SEC. 13307. ADMINISTRATIVE REVIEW OF TERMINATION OF INSTALLMENT AGREEMENT.

(a) GENERAL RULE.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by adding at the end the following new subsection:

"(c) ADMINISTRATIVE REVIEW.—The Secretary shall establish procedures for an independent administrative review of terminations of installment agreements under this section for taxpayers who request such a review."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 1996.

PART III—ABATEMENT OF INTEREST AND PENALTIES

SEC. 13311. EXPANSION OF AUTHORITY TO ABATE INTEREST.

(a) GENERAL RULE.—Paragraph (1) of section 6404(e) (relating to abatement of interest in certain cases) is amended—

(1) by inserting "unreasonable" before "error" each place it appears in subparagraphs (A) and (B), and

(2) by striking "in performing a ministerial act" each place it appears and inserting "in performing a ministerial or managerial act".

(b) CLERICAL AMENDMENT.—The subsection heading for subsection (e) of section 6404 is amended—

(1) by striking "ASSESSMENTS" and inserting "ABATEMENT", and

(2) by inserting "UNREASONABLE" before "ERRORS".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of the enactment of this Act.

SEC. 13312. REVIEW OF IRS FAILURE TO ABATE INTEREST.

(a) IN GENERAL.—Section 6404 is amended by adding at the end the following new subsection:

"(g) REVIEW OF DENIAL OF REQUEST FOR ABATEMENT OF INTEREST.—The Tax Court shall have jurisdiction over any action brought by a taxpayer who meets the requirements referred to in section 7430(c)(4)(A)(iii) to determine whether the Secretary's failure to abate interest under this section was an abuse of discretion if such action is brought within 6 months after the date of the Secretary's final determination not to abate such interest."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests for abatement after the date of the enactment of this Act.

SEC. 13313. EXTENSION OF INTEREST-FREE PERIOD FOR PAYMENT OF TAX AFTER NOTICE AND DEMAND.

(a) GENERAL RULE.—Paragraph (3) of section 6601(e) (relating to payments made within 10 days after notice and demand) is amended to read as follows:

"(3) PAYMENTS MADE WITHIN SPECIFIED PERIOD AFTER NOTICE AND DEMAND.—If notice and demand is made for payment of any amount and if such amount is paid within 21 calendar days (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000) after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand."

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 6601(e)(2) is amended by striking "10 days from the date of notice and demand therefor" and inserting "21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000)".

(2) Paragraph (3) of section 6651(a) is amended by striking "10 days of the date of the notice and demand therefor" and inserting "21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of any notice and demand given after June 30, 1996.

PART IV—JOINT RETURNS

SEC. 13316. STUDIES OF JOINT RETURN-RELATED ISSUES.

The Secretary of the Treasury or his delegate and the Comptroller General of the United States shall each conduct separate studies of—

(1) the effects of changing the liability for tax on a joint return from being joint and several to being proportionate to the tax attributable to each spouse,

(2) the effects of providing that, if a divorce decree allocates liability for tax on a joint return filed before the divorce, the Secretary may collect such liability only in accordance with the decree,

(3) whether those provisions of the Internal Revenue Code of 1986 intended to provide relief to innocent spouses provide meaningful relief in all cases where such relief is appropriate, and

(4) the effect of providing that community income (as defined in section 66(d) of such Code) which, in accordance with the rules contained in section 879(a) of such Code, would be treated as the income of one spouse is exempt from a levy for failure to pay any tax imposed by subtitle A by the other spouse for a taxable year ending before their marriage.

The reports of such studies shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate within 6 months after the date of the enactment of this Act.

SEC. 13317. JOINT RETURN MAY BE MADE AFTER SEPARATE RETURNS WITHOUT FULL PAYMENT OF TAX.

(a) GENERAL RULE.—Paragraph (2) of section 6013(b) (relating to limitations on filing of joint return after filing separate returns) is amended by striking subparagraph (A) and redesignating the following subparagraphs accordingly.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 13318. DISCLOSURE OF COLLECTION ACTIVITIES.

Subsection (e) of section 6103 (relating to disclosure to persons having material interest) is amended by adding at the end the following new paragraph:

"(8) DISCLOSURE OF COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN.—If any deficiency of tax with respect to a joint return is assessed and the individuals filing such return are no longer married or no longer reside in the same household, upon request in writing by either of such individuals, the Secretary shall disclose in writing to the individual making the request whether the Secretary has attempted to collect such deficiency from such other individual, the general nature of such collection activities, and the amount collected."

PART V—COLLECTION ACTIVITIES

SEC. 13321. MODIFICATIONS TO LIEN AND LEVY PROVISIONS.

(a) WITHDRAWAL OF CERTAIN NOTICES.—Section 6323 (relating to validity and priority against certain persons) is amended by adding at the end the following new subsection:

"(j) WITHDRAWAL OF NOTICE IN CERTAIN CIRCUMSTANCES.—

"(1) IN GENERAL.—The Secretary may withdraw a notice of a lien filed under this section and this chapter shall be applied as if the withdrawn notice had not been filed, if the Secretary determines that—

"(A) the filing of such notice was premature or otherwise not in accordance with administrative procedures of the Secretary,

"(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise,

"(C) the withdrawal of such notice will facilitate the collection of the tax liability, or

"(D) with the consent of the taxpayer or the Taxpayer Advocate, the withdrawal of such notice would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States.

Any such withdrawal shall be made by filing notice at the same office as the withdrawn notice. A copy of such notice of withdrawal shall be provided to the taxpayer.

"(2) NOTICE TO CREDIT AGENCIES, ETC.—Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn under paragraph (1), the Secretary shall promptly make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in such request, of the withdrawal of such notice. Any such request shall be in such form as the Secretary may prescribe."

(b) RETURN OF LEVIED PROPERTY IN CERTAIN CASES.—Section 6343 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

"(d) RETURN OF PROPERTY IN CERTAIN CASES.—If—

"(1) any property has been levied upon, and

"(2) the Secretary determines that—

"(A) the levy on such property was premature or otherwise not in accordance with administrative procedures of the Secretary,

"(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the levy was imposed by means of installment payments, unless such agreement provides otherwise,

"(C) the return of such property will facilitate the collection of the tax liability, or

"(D) with the consent of the taxpayer or the Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States,

the provisions of subsection (b) shall apply in the same manner as if such property had been wrongly levied upon, except that no interest shall be allowed under subsection (c)."

(c) MODIFICATIONS IN CERTAIN LEVY EXEMPTION AMOUNTS.—

(1) FUEL, ETC.—Paragraph (2) of section 6334(a) (relating to fuel, provisions, furniture, and personal effects exempt from levy) is amended—

(A) by striking "If the taxpayer is the head of a family, so" and inserting "So",

(B) by striking "his household" and inserting "the taxpayer's household", and

(C) by striking "$1,650 ($1,550 in the case of levies issued during 1989)" and inserting "$2,500".

(2) INFLATION ADJUSTMENT.—Section 6334 (relating to property exempt from levy) is amended by adding at the end the following new subsection:

"(f) INFLATION ADJUSTMENT.—

"(1) IN GENERAL.—In the case of any calendar year beginning after 1996, each dollar amount referred to in paragraphs (2) and (3) of subsection (a) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof.

"(2) ROUNDING.—If any dollar amount after being increased under paragraph (1) is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10."

(3) TECHNICAL AMENDMENT.—Paragraph (3) of section 6334(a) is amended by striking "($1,050 in the case of levies issued during 1989)".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) EXEMPT AMOUNTS.—The amendments made by subsection (c) shall take effect with respect to levies issued after December 31, 1995.

SEC. 13322. OFFERS-IN-COMPROMISE.

(a) REVIEW REQUIREMENTS.—Subsection (b) of section 7122 (relating to records) is amended by striking "$500." and inserting "$100,000. However, such compromise shall be subject to continuing quality review by the Secretary."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

PART VI—INFORMATION RETURNS

SEC. 13326. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS.

(a) GENERAL RULE.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by redesignating section 7434 as section 7435 and by inserting after section 7433 the following new section:

"SEC. 7434. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS.

"(a) IN GENERAL.—If any person willfully files a fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return.

"(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the greater of $5,000 or the sum of—

"(1) any actual damages sustained by the plaintiff as a proximate result of the filing of the fraudulent information return (including any costs attributable to resolving deficiencies asserted as a result of such filing),

"(2) the costs of the action, and

"(3) in the court's discretion, reasonable attorneys fees.

"(c) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce the liability created under this section may be brought without regard to the amount in controversy and may be brought only within the later of—

"(1) 6 years after the date of the filing of the fraudulent information return, or

"(2) 1 year after the date such fraudulent information return would have been discovered by exercise of reasonable care.

"(d) COPY OF COMPLAINT FILED WITH IRS.—Any person bringing an action under subsection (a) shall provide a copy of the complaint to the Internal Revenue Service upon the filing of such complaint with the court.

"(e) FINDING OF COURT TO INCLUDE CORRECT AMOUNT OF PAYMENT.—The decision of the court awarding damages in an action brought under subsection (a) shall include a finding of the correct amount which should have been reported in the information return.

"(f) INFORMATION RETURN.—For purposes of this section, the term 'information return' means any statement described in section 6724(d)(1)(A)."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by striking the item relating to section 7434 and inserting the following:

"Sec. 7434. Civil damages for fraudulent filing of information returns.
"Sec. 7435. Cross references."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fraudulent information returns filed after the date of the enactment of this Act.

SEC. 13327. REQUIREMENT TO CONDUCT REASONABLE INVESTIGATIONS OF INFORMATION RETURNS.

(a) GENERAL RULE.—Section 6201 (relating to assessment authority) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) REQUIRED REASONABLE VERIFICATION OF INFORMATION RETURNS.—In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return."

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

PART VII—AWARDING OF COSTS AND CERTAIN FEES

SEC. 13331. UNITED STATES MUST ESTABLISH THAT ITS POSITION IN PROCEEDING WAS SUBSTANTIALLY JUSTIFIED.

(a) GENERAL RULE.—Subparagraph (A) of section 7430(c)(4) (defining prevailing party) is amended by striking clause (i) and by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

(b) BURDEN OF PROOF ON UNITED STATES.—Paragraph (4) of section 7430(c) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) EXCEPTION IF UNITED STATES ESTABLISHES THAT ITS POSITION WAS SUBSTANTIALLY JUSTIFIED.—

"(i) GENERAL RULE.—A party shall not be treated as the prevailing party in a proceeding to which subsection (a) applies if the United States establishes that the position of the United States in the proceeding was substantially justified.

"(ii) PRESUMPTION OF NO JUSTIFICATION IF INTERNAL REVENUE SERVICE DIDN'T FOLLOW CERTAIN PUBLISHED GUIDANCE.—For purposes of clause (i), the position of the United States shall be presumed not to be substantially justified if the Internal Revenue Service did not follow its applicable published guidance in the administrative proceeding. Such presumption may be rebutted.

"(iii) APPLICABLE PUBLISHED GUIDANCE.—For purposes of clause (ii), the term 'applicable published guidance' means—

"(I) regulations, revenue rulings, revenue procedures, information releases, notices, and announcements, and

"(II) any of the following which are issued to the taxpayer: private letter rulings, technical advice memoranda, and determination letters."

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 7430(c)(2) is amended by striking "paragraph (4)(B)" and inserting "paragraph (4)(C)".

(2) Subparagraph (C) of section 7430(c)(4), as redesignated by subsection (b), is amended by striking "subparagraph (A)" and inserting "this paragraph".

(3) Sections 6404(g) and 6656(c)(1), as amended by this title, are each amended by striking "section 7430(c)(4)(A)(iii)" and inserting "section 7430(c)(4)(A)(ii)".

SEC. 13332. INCREASED LIMIT ON ATTORNEY FEES.

Paragraph (1) of section 7430(c) (defining reasonable litigation costs) is amended—

(1) by striking "$75" in clause (iii) of subparagraph (B) and inserting "$110",

(2) by striking "an increase in the cost of living or" in clause (iii) of subparagraph (B), and

(3) by adding after clause (iii) the following:

"In the case of any calendar year beginning after 1996, the dollar amount referred to in clause (iii) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof. If any dollar amount after being increased under the preceding sentence is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10."

SEC. 13333. FAILURE TO AGREE TO EXTENSION NOT TAKEN INTO ACCOUNT.

Paragraph (1) of section 7430(b) (relating to requirement that administrative remedies be exhausted) is amended by adding at the end the following new sentence: "Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence."

SEC. 13334. AWARD OF LITIGATION COSTS PERMITTED IN DECLARATORY JUDGMENT PROCEEDINGS.

Subsection (b) of section 7430 is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

SEC. 13335. EFFECTIVE DATE.

The amendments made by this part shall apply in the case of proceedings commenced after the date of the enactment of this Act.

PART VIII—MODIFICATION TO RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS

SEC. 13336. INCREASE IN LIMIT ON RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS.

(a) GENERAL RULE.—Subsection (b) of section 7433 (relating to damages) is amended by striking "$100,000" and inserting "$1,000,000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to actions by officers or employees of the Internal Revenue Service after the date of the enactment of this Act.

SEC. 13337. COURT DISCRETION TO REDUCE AWARD FOR LITIGATION COSTS FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.

(a) GENERAL RULE.—Paragraph (1) of section 7433(d) (relating to civil damages for certain unauthorized collection actions) is amended to read as follows:

"(1) AWARD FOR DAMAGES MAY BE REDUCED IF ADMINISTRATIVE REMEDIES NOT EXHAUSTED.—The amount of damages awarded under subsection (b) may be reduced if the court determines that the plaintiff has not exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply in the case of proceedings commenced after the date of the enactment of this Act.

PART IX—MODIFICATIONS TO PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX

SEC. 13341. PRELIMINARY NOTICE REQUIREMENT.

(a) IN GENERAL.—Section 6672 (relating to failure to collect and pay over tax, or attempt to evade or defeat tax) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) PRELIMINARY NOTICE REQUIREMENT.—

"(1) IN GENERAL.—No penalty shall be imposed under subsection (a) unless the Secretary notifies the taxpayer in writing by mail to an address as determined under section 6212(b) that the taxpayer shall be subject to an assessment of such penalty.

"(2) TIMING OF NOTICE.—The mailing of the notice described in paragraph (1) shall precede any notice and demand of any penalty under subsection (a) by at least 60 days.

"(3) STATUTE OF LIMITATIONS.—If a notice described in paragraph (1) with respect to any penalty is mailed before the expiration of the period provided by section 6501 for the assessment of such penalty (determined without regard to this paragraph), the period provided by such section for the assessment of such penalty shall not expire before the later of—

"(A) the date 90 days after the date on which such notice was mailed, or

"(B) if there is a timely protest of the proposed assessment, the date 30 days after the Secretary makes a final administrative determination with respect to such protest.

"(4) EXCEPTION FOR JEOPARDY.—This subsection shall not apply if the Secretary finds that the collection of the penalty is in jeopardy."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to proposed assessments made after June 30, 1996.

SEC. 13342. DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN 1 PERSON LIABLE FOR PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX.

(a) IN GENERAL.—Subsection (e) of section 6103 (relating to disclosure to persons having material interest), as amended by section 13318, is amended by adding at the end the following new paragraph:

"(9) DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN 1 PERSON SUBJECT TO PENALTY UNDER SECTION 6672.—If the Secretary determines that a person is liable for a penalty under section 6672(a) with respect to any failure, upon request in writing of such person, the Secretary shall disclose in writing to such person—

"(A) the name of any other person whom the Secretary has determined to be liable for such penalty with respect to such failure, and

"(B) whether the Secretary has attempted to collect such penalty from such other person, the general nature of such collection activities, and the amount collected."

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

SEC. 13343. RIGHT OF CONTRIBUTION WHERE MORE THAN 1 PERSON LIABLE FOR PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX.

(a) IN GENERAL.—Section 6672 (relating to failure to collect and pay over tax, or attempt to evade or defeat tax) is amended by adding at the end the following new subsection:

"(d) RIGHT OF CONTRIBUTION WHERE MORE THAN 1 PERSON LIABLE FOR PENALTY.—If more than 1 person is liable for the penalty under subsection (a) with respect to any tax, each person who paid such penalty shall be entitled to recover from other persons who are liable for such penalty an amount equal to the excess of the amount paid by such person over such person's proportionate share of the penalty. Any claim for such a recovery may be made only in a proceeding which is separate from, and is not joined with—

"(1) an action for collection of such penalty brought by the United States, or

"(2) a proceeding in which the United States files a counterclaim or third-party complaint for the collection of such penalty."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to penalties assessed after the date of the enactment of this Act.

SEC. 13344. VOLUNTEER BOARD MEMBERS OF TAX-EXEMPT ORGANIZATIONS EXEMPT FROM PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX.

(a) IN GENERAL.—Section 6672 is amended by adding at the end the following new subsection:

"(e) EXCEPTION FOR VOLUNTARY BOARD MEMBERS OF TAX-EXEMPT ORGANIZATIONS.—No penalty shall be imposed by subsection (a) on any unpaid, volunteer member of any board of trustees or directors of an organization exempt from tax under subtitle A if such member—

"(1) is solely serving in an honorary capacity,

"(2) does not participate in the day-to-day or financial operations of the organization, and

"(3) does not have actual knowledge of the failure on which such penalty is imposed.

The preceding sentence shall not apply if it results in no person being liable for the penalty imposed by subsection (a)."

(b) PUBLIC INFORMATION REQUIREMENTS.—

(1) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate (hereafter in this subsection referred to as the "Secretary") shall take such actions as may be appropriate to ensure that employees are aware of their responsibilities under the Federal tax depository system, the circumstances under which employees may be liable for the penalty imposed by section 6672 of the Internal Revenue Code of 1986, and the responsibility to promptly report to the Internal Revenue Service any failure referred to in subsection (a) of such section 6672. Such actions shall include—

(A) printing of a warning on deposit coupon booklets and the appropriate tax returns that certain employees may be liable for the penalty imposed by such section 6672, and

(B) the development of a special information packet.

(2) DEVELOPMENT OF EXPLANATORY MATERIALS.—The Secretary shall develop materials explaining the circumstances under which board members of tax-exempt organizations (including voluntary and honorary members) may be subject to penalty under section 6672 of such Code. Such materials shall be made available to tax-exempt organizations.

(3) IRS INSTRUCTIONS.—The Secretary shall clarify the instructions to Internal Revenue Service employees on the application of the penalty under section 6672 of such Code with regard to voluntary members of boards of trustees or directors of tax- exempt organizations.

PART X—MODIFICATIONS OF RULES RELATING TO SUMMONSES

SEC. 13346. ENROLLED AGENTS INCLUDED AS THIRD-PARTY RECORDKEEPERS.

(a) IN GENERAL.—Paragraph (3) of section 7609(a) (relating to third-party recordkeeper defined) is amended by striking "and" at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting "; and", and by adding at the end the following the subparagraph:

"(I) any enrolled agent."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to summonses issued after the date of the enactment of this Act.

SEC. 13347. SAFEGUARDS RELATING TO DESIGNATED SUMMONSES.

(a) STANDARD OF REVIEW.—Subparagraph (A) of section 6503(j)(2) (defining designated summons) is amended by redesignating clauses (i) and (ii) as clauses (ii) and (iii), respectively, and by inserting before clause (ii) (as so redesignated) the following new clause:

"(i) the issuance of such summons is preceded by a review of such issuance by the regional counsel of the Office of Chief Counsel for the region in which the examination of the corporation is being conducted,".

(b) LIMITATION ON PERSONS TO WHOM DESIGNATED SUMMONS MAY BE ISSUED.—Paragraph (1) of section 6503(j) is amended by striking "with respect to any return of tax by a corporation" and inserting "to a corporation (or to any other person to whom the corporation has transferred records) with respect to any return of tax by such corporation for a taxable year (or other period) for which such corporation is being examined under the coordinated examination program (or any successor program) of the Internal Revenue Service".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to summonses issued after the date of the enactment of this Act.

SEC. 13348. ANNUAL REPORT TO CONGRESS CONCERNING DESIGNATED SUMMONSES.

Not later than December 31 of each calendar year after 1995, the Secretary of the Treasury or his delegate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the number of designated summonses (as defined in section 6503(j) of the Internal Revenue Code of 1986) which were issued during the preceding 12 months.

PART XI—RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS

SEC. 13351. RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS.

(a) IN GENERAL.—Subsection (b) of section 7805 (relating to rules and regulations) is amended to read as follows:

"(b) RETROACTIVITY OF REGULATIONS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates:

"(A) The date on which such regulation is filed with the Federal Register.

"(B) In the case of any final regulation, the date on which any proposed or temporary regulation to which such final regulation relates was filed with the Federal Register.

"(C) The date on which any notice substantially describing the expected contents of any temporary, proposed, or final regulation is issued to the public.

"(2) EXCEPTION FOR PROMPTLY ISSUED REGULATIONS.—Paragraph (1) shall not apply to regulations filed or issued within 12 months of the date of the enactment of the statutory provision to which the regulation relates.

"(3) PREVENTION OF ABUSE.—The Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse.

"(4) CORRECTION OF PROCEDURAL DEFECTS.—The Secretary may provide that any regulation may apply retroactively to correct a procedural defect in the issuance of any prior regulation.

"(5) INTERNAL REGULATIONS.—The limitation of paragraph (1) shall not apply to any regulation relating to internal Treasury Department policies, practices, or procedures.

"(6) CONGRESSIONAL AUTHORIZATION.—The limitation of paragraph (1) may be superseded by a legislative grant from Congress authorizing the Secretary to prescribe the effective date with respect to any regulation.

"(7) ELECTION TO APPLY RETROACTIVELY.—Paragraph (1) shall not apply to any regulation which the taxpayer elects to apply before the dates specified in paragraph (1) but only if such election applies to all regulations which were issued with such regulation under the statutory provision to which such regulation relates.

"(8) APPLICATION TO RULINGS.—The Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to regulations which relate to statutory provisions enacted on or after the date of the enactment of this Act.

PART XII—MISCELLANEOUS PROVISIONS

SEC. 13356. REPORT ON PILOT PROGRAM FOR APPEAL OF ENFORCEMENT ACTIONS.

Not later than March 1, 1996, the Secretary of the Treasury or his delegate shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the pilot program for appeals of enforcement actions (including lien, levy, and seizure actions) to the Appeals Division of the Internal Revenue Service, together with such recommendations as he may deem advisable.

SEC. 13357. PHONE NUMBER OF PERSON PROVIDING PAYEE STATEMENTS REQUIRED TO BE SHOWN ON SUCH STATEMENT.

(a) GENERAL RULE.—The following provisions are each amended by striking "name and address" and inserting "name, address, and phone number of the information contact":

(1) Section 6041(d)(1).
(2) Section 6041A(e)(1).
(3) Section 6042(c)(1).
(4) Section 6044(e)(1).
(5) Section 6045(b)(1).
(6) Section 6049(c)(1)(A).
(7) Section 6050B(b)(1).
(8) Section 6050H(d)(1).
(9) Section 6050I(e)(1).
(10) Section 6050J(e).
(11) Section 6050K(b)(1).
(12) Section 6050N(b)(1).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to statements required to be furnished after December 31, 1996 (determined without regard to any extension).

SEC. 13358. REQUIRED NOTICE OF CERTAIN PAYMENTS.

If any payment is received by the Secretary of the Treasury or his delegate from any taxpayer and the Secretary cannot associate such payment with such taxpayer, the Secretary shall make reasonable efforts to notify the taxpayer of such inability within 60 days after the receipt of such payment.

SEC. 13359. UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.

(a) IN GENERAL.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties), as amended by section 13316(a), is amended by redesignating section 7435 as section 7436 and by inserting after section 7434 the following new section:

"SEC. 7435. CIVIL DAMAGES FOR UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.

"(a) IN GENERAL.—If any officer or employee of the United States intentionally compromises the determination or collection of any tax due from an attorney, certified public accountant, or enrolled agent representing a taxpayer in exchange for information conveyed by the taxpayer to the attorney, certified public accountant, or enrolled agent for purposes of obtaining advice concerning the taxpayer's tax liability, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

"(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of $500,000 or the sum of—

"(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the information disclosure, and

"(2) the costs of the action.

Damages shall not include the taxpayer's liability for any civil or criminal penalties, or other losses attributable to incarceration or the imposition of other criminal sanctions.

"(c) PAYMENT AUTHORITY.—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

"(d) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the actions creating such liability would have been discovered by exercise of reasonable care.

"(e) MANDATORY STAY.—Upon a certification by the Commissioner or the Commissioner's delegate that there is an ongoing investigation or prosecution of the taxpayer, the district court before which an action under this section is pending, shall stay all proceedings with respect to such action pending the conclusion of the investigation or prosecution.

"(f) CRIME-FRAUD EXCEPTION.—Subsection (a) shall not apply to information conveyed to an attorney, certified public accountant, or enrolled agent for the purpose of perpetrating a fraud or crime."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76, as amended by section 13316(b), is amended by striking the item relating to section 7435 and by adding at the end the following new items:

"Sec. 7435. Civil damages for unauthorized enticement of information disclosure.
"Sec. 7436. Cross references."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions after the date of the enactment of this Act.

SEC. 13360. ANNUAL REMINDERS TO TAXPAYERS WITH OUTSTANDING DELINQUENT ACCOUNTS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

"SEC. 7524. ANNUAL NOTICE OF TAX DELINQUENCY.

"Not less often than annually, the Secretary shall send a written notice to each taxpayer who has a tax delinquent account of the amount of the tax delinquency as of the date of the notice."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following new item:

"Sec. 7524. Annual notice of tax delinquency."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years after 1995.

SEC. 13361. 5-YEAR EXTENSION OF AUTHORITY FOR UNDERCOVER OPERATIONS.

(a) IN GENERAL.—Paragraph (3) of section 7601(c) of the Anti-Drug Abuse Act of 1988 is amended by striking all that follows "this Act" and inserting a period.

(b) RESTORATION OF AUTHORITY FOR 5 YEARS.—Subsection (c) of section 7608 is amended by adding at the end the following new paragraph:

"(6) APPLICATION OF SECTION.—The provisions of this subsection—

"(A) shall apply after November 17, 1988, and before January 1, 1990, and

"(B) shall apply after the date of the enactment of this paragraph and before January 1, 2001.

All amounts expended pursuant to this subsection during the period described in subparagraph (B) shall be recovered to the extent possible, and deposited in the Treasury of the United States as miscellaneous receipts, before January 1, 2001."

(c) ENHANCED OVERSIGHT.—

(1) ADDITIONAL INFORMATION REQUIRED IN REPORTS TO CONGRESS.—Subparagraph (B) of section 7608(c)(4) is amended—

(A) by striking "preceding the period" in clause (ii),

(B) by striking "and" at the end of clause (ii), and

(C) by striking clause (iii) and inserting the following:

"(iii) the number, by programs, of undercover investigative operations closed in the 1-year period for which such report is submitted, and

"(iv) the following information with respect to each undercover investigative operation pending as of the end of the 1-year period for which such report is submitted or closed during such 1-year period—

"(I) the date the operation began and the date of the certification referred to in the last sentence of paragraph (1),

"(II) the total expenditures under the operation and the amount and use of the proceeds from the operation,

"(III) a detailed description of the operation including the potential violation being investigated and whether the operation is being conducted under grand jury auspices, and

"(IV) the results of the operation including the results of criminal proceedings."

(2) AUDITS REQUIRED WITHOUT REGARD TO AMOUNTS INVOLVED.—Subparagraph (C) of section 7608(c)(5) is amended to read as follows:

"(C) UNDERCOVER INVESTIGATIVE OPERATION.—The term 'undercover investigative operation' means any undercover investigative operation of the Service; except that, for purposes of subparagraphs (A) and (C) of paragraph (4), such term only includes an operation which is exempt from section 3302 or 9102 of title 31, United States Code."

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

SEC. 13362. DISCLOSURE OF FORM 8300 INFORMATION ON CASH TRANSACTIONS.

(a) IN GENERAL.—Subsection (l) of section 6103 (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

"(15) DISCLOSURE OF RETURNS FILED UNDER SECTION 6050I.—The Secretary may, upon written request, disclose to officers and employees of—

"(A) any Federal agency,

"(B) any agency of a State or local government, or

"(C) any agency of the government of a foreign country,

information contained on returns filed under section 6050I. Any such disclosure shall be made on the same basis, and subject to the same conditions, as apply to disclosures of information on reports filed under section 5313 of title 31, United States Code; except that no disclosure under this paragraph shall be made for purposes of the administration of any tax law."

(b) CONFORMING AMENDMENTS.—

(1) Subsection (i) of section 6103 is amended by striking paragraph (8).

(2) Subparagraph (A) of section 6103(p)(3) is amended—

(A) by striking "(7)(A)(ii), or (8)" and inserting "or (7)(A)(ii)", and

(B) by striking "or (14)" and inserting "(14), or (15)".

(3) The material preceding subparagraph (A) of section 6103(p)(4) is amended—

(A) by striking "(5), or (8)" and inserting "or (5)",

(B) by striking "(i)(3)(B)(i), or (8)" and inserting "(i)(3)(B)(i),", and

(C) by striking "or (12)" and inserting "(12), or (15)".

(4) Clause (ii) of section 6103(p)(4)(F) is amended—

(A) by striking "(5), or (8)" and inserting "or (5)", and

(B) by striking "or (14)" and inserting "(14), or (15)".

(5) Paragraph (2) of section 7213(a) is amended by striking "or (12)" and inserting "(12), or (15)".

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

SEC. 13363. DISCLOSURE OF RETURNS AND RETURN INFORMATION TO DESIGNEE OF TAXPAYER.

Subsection (c) of section 6103 (relating to disclosure of returns and return information to designee of taxpayer) is amended by striking "written request for or consent to such disclosure" and inserting "request for or consent to such disclosure".

SEC. 13364. STUDY OF NETTING OF INTEREST ON OVERPAYMENTS AND LIABILITIES.

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall—

(1) conduct a study of the manner in which the Internal Revenue Service has implemented the netting of interest on overpayments and underpayments and of the policy and administrative implications of global netting, and

(2) before submitting the report of such study, hold a public hearing to receive comments on the matters included in such study.

(b) REPORT.—The report of such study shall be submitted not later than 6 months after the date of the enactment of this Act to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 13365. CREDIT FOR EXPENSES OF CERTAIN TCMP AUDITS.

(a) IN GENERAL.—Subchapter B of chapter 65 is amended by adding at the end the following new section:

"SEC. 6428. CREDIT FOR EXPENSES OF 1994 TCMP AUDITS.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by subtitle A an amount equal to the qualified TCMP expenses paid or incurred by the taxpayer during the taxable year.

"(b) LIMITATION.—The amount of the credit allowed by subsection (a) shall not exceed $3,000 with respect to an audit.

"(c) QUALIFIED TCMP EXPENSES.—For purposes of this section, the term 'qualified TCMP expenses' means amounts which would (but for subsection (d)) be allowed as a deduction under section 162 or 212(3) in connection with an audit under the Taxpayer Compliance Measurement Program of the taxpayer's return of tax imposed by chapter 1 for any taxable year beginning during 1994. Such term shall not include any expense in connection with an audit of an estate, trust, partnership, or S corporation.

"(d) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under chapter 1 for any amount for which a credit is allowed under this section.

"(e) CREDIT TREATED AS SUBPART C CREDIT.—For purposes of this title, the credit allowed under subsection (a) shall be treated as a credit allowed under subpart C of part IV of subchapter A of chapter 1."

(b) TECHNICAL AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period ", or from section 6428 of such Code".

(2) The table of sections for such subchapter B is amended by adding at the end the following new item:

"Sec. 6428. Credit for expenses of 1994 TCMP audits."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after December 31, 1994, in taxable years ending after such date.

SEC. 13366. EXPENSES OF DETECTION OF UNDERPAYMENTS AND FRAUD, ETC.

(a) IN GENERAL.—Section 7623 (relating to expenses of deduction and punishment of frauds) is amended to read as follows:

"SEC. 7623. EXPENSES OF DETECTION OF UNDERPAYMENTS AND FRAUD, ETC.

"The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums as he deem necessary for—

"(1) detecting underpayments of tax, and

"(2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same,

in cases where such expenses are not otherwise provided for by law. Any amount payable under the preceding sentence shall be paid from the proceeds of amounts (other than interest) collected by reason of the information provided, and any amount so collected shall be available for such payments.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 78 is amended by striking the item relating to section 7623 and inserting the following new item:

"Sec. 7623. Expenses of detection of underpayments and fraud, etc.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date which is 6 months after the enactment of this Act.

(d) REPORT.—The Secretary of the Treasury or his delegate shall submit an annual report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the payments under section 7623 of the Internal Revenue Code of 1986 during the year and on the amounts collected for which such payments were made.

Subtitle D—Additional Technical Corrections

SEC. 13401. REPORTING OF REAL ESTATE TRANSACTIONS.

(a) IN GENERAL.—Paragraph (3) of section 6045(e) (relating to prohibition of separate charge for filing return) is amended by adding at the end the following new sentence: "Nothing in this paragraph shall be construed to prohibit the real estate reporting person from taking into account its cost of complying with such requirement in establishing its charge (other than a separate charge for complying with such requirement) to any customer for performing services in the case of a real estate transaction."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in section 1015(e)(2)(A) of the Technical and Miscellaneous Revenue Act of 1988.

SEC. 13402. CLARIFICATION OF DENIAL OF DEDUCTION FOR STOCK REDEMPTION EXPENSES.

(a) IN GENERAL.—Paragraph (1) of section 162(k) is amended by striking "the redemption of its stock" and inserting "the reacquisition of its stock or of the stock of any related person (as defined in section 465(b)(3)(C))".

(b) CERTAIN DEDUCTIONS PERMITTED.—Subparagraph (A) of section 162(k)(2) is amended by striking "or" at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

"(ii) deduction for amounts which are properly allocable to indebtedness and amortized over the term of such indebtedness, or".

(c) CLERICAL AMENDMENT.—The subsection heading for subsection (k) of section 162 is amended by striking "REDEMPTION" and inserting "REACQUISITION".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts paid or incurred after September 13, 1995, in taxable years ending after such date.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall take effect as if included in the amendment made by section 613 of the Tax Reform Act of 1986.

SEC. 13403. CLARIFICATION OF DEPRECIATION CLASS FOR CERTAIN ENERGY PROPERTY.

(a) IN GENERAL.—Subparagraph (B) of section 168(e)(3) (relating to 5-year property) is amended by adding at the end the following flush sentence:

"Nothing in any provision of law shall be construed to treat property as not being described in clause (vi)(I) (or the corresponding provisions of prior law) by reason of being public utility property (within the meaning of section 48(a)(3))."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 11813 of the Revenue Reconciliation Act of 1990.

SEC. 13404. CLERICAL AMENDMENT TO SECTION 404.

(a) IN GENERAL.—Paragraph (1) of section 404(j) is amended by striking "(10)" and inserting "(9)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 713(d)(4)(A) of the Deficit Reduction Act of 1984.

SEC. 13405. TREATMENT OF CERTAIN VETERANS' REEMPLOYMENT RIGHTS.

(a) IN GENERAL.—Section 414 is amended by adding at the end the following new subsection:

"(u) SPECIAL RULES RELATING TO VETERANS' REEMPLOYMENT RIGHTS.—

"(1) TREATMENT OF CERTAIN CONTRIBUTIONS MADE PURSUANT TO VETERANS' REEMPLOYMENT RIGHTS.—If any contribution is made by an employer or an employee under an individual account plan with respect to an employee, or by an employee to a defined benefit pension plan that provides for employee contributions, and such contribution is required by reason of such employee's rights under chapter 43 of title 38, United States Code, resulting from qualified military service, then—

"(A) such contribution shall not be subject to any otherwise applicable limitation contained in section 402(g), 402(h), 403(b), 404(a), 404(h), 408, 415, or 457, and shall not be taken into account in applying such limitations to other contributions or benefits under such plan or any other plan, with respect to the year in which the contribution is made,

"(B) such contribution shall be subject to the limitations referred to in subparagraph (A) with respect to the year to which the contribution relates (in accordance with rules prescribed by the Secretary), and

"(C) such plan shall not be treated as failing to meet the requirements of section 401(a)(4), 401(a)(26), 401(k)(3), 401(m), 403(b)(12), 408(k)(3), 408(k)(6), 410(b), or 416 by reason of the making of such contribution.

For purposes of the preceding sentence, any elective deferral or employee contribution made under paragraph (2) shall be treated as required by reason of the employee's rights under such chapter.

"(2) REEMPLOYMENT RIGHTS WITH RESPECT TO ELECTIVE DEFERRALS.—

"(A) IN GENERAL.—For purposes of this subchapter and subchapter E, if an employee is entitled to the benefits of chapter 43 of title 38, United States Code, with respect to any plan which provides for elective deferrals, the employer sponsoring the plan shall be treated as meeting the requirements of such chapter 43 with respect to such elective deferrals only if such employer—

"(i) permits such employee to make additional elective deferrals under such plan (in the amount determined under subparagraph (B) or such lesser amount as is elected by the employee) during the period which begins on the date of the reemployment of such employee with such employer and has the same length as the lesser of—

"(I) the product of 3 and the period of qualified military service which resulted in such rights, and

"(II) 5 years, and

"(ii) makes a matching contribution with respect to any additional elective deferral made pursuant to clause (i) which would have been required had such deferral actually been made during the period of such qualified military service.

"(B) AMOUNT OF MAKEUP REQUIRED.—The amount determined under this subparagraph with respect to any plan is the maximum amount of the elective deferrals that the individual would have been permitted to make under the plan in accordance with the limitations referred to in paragraph (1)(A) during his period of qualified military service if he had continued to be employed by the employer during such period and received compensation as determined under paragraph (7). Proper adjustment shall be made to the amount determined under the preceding sentence for any elective deferrals actually made during the period of such qualified military service.

"(C) ELECTIVE DEFERRAL.—For purposes of this paragraph, the term 'elective deferral' has the meaning given such term by section 402(g)(3); except that such term shall include any deferral of compensation under an eligible deferred compensation plan (as defined in section 457(b)).

"(D) AFTER-TAX EMPLOYEE CONTRIBUTIONS.—References in subparagraphs (A) and (B) to elective deferrals shall be treated as including references to other employee contributions.

"(3) CERTAIN RETROACTIVE ADJUSTMENTS NOT REQUIRED.—For purposes of this subchapter and subchapter E, no provision of chapter 43 of title 38, United States Code, shall be construed as requiring—

"(A) any crediting of earnings to an employee with respect to any contribution before such contribution is actually made, or

"(B) any allocation of any forfeiture with respect to the period of qualified military service.

"(4) LOAN REPAYMENT SUSPENSIONS PERMITTED.—If any plan suspends the obligation to repay any loan made to an employee from such plan for any part of any period during which such employee is performing qualified military service, such suspension shall not be taken into account for purposes of section 72(p), 401(a), or 4975(d)(1).

"(5) QUALIFIED MILITARY SERVICE.—For purposes of this subsection, the term 'qualified military service' means any service in the uniformed services (as defined in chapter 43 of title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

"(6) INDIVIDUAL ACCOUNT PLAN.—For purposes of this subsection, the term 'individual account plan' means any defined contribution plan, any tax-sheltered annuity plan under section 403(b), and any eligible deferred compensation plan (as defined in section 457(b)).

"(7) COMPENSATION.—For purposes of section 415(c)(3), an employee who is in qualified military service shall be treated as receiving compensation from the employer during such period of qualified military service equal to—

"(A) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for absence during the period of qualified military service, or

"(B) if the compensation of the employee was not based on a fixed rate, the employee's average compensation from the employer during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

"(8) REQUIREMENTS FOR QUALIFIED RETIREMENT PLAN.—For purposes of this subchapter and subchapter E, an employer sponsoring a plan shall be treated as meeting the requirements of chapter 43 of title 38, United States Code, only if each of the following requirements is met:

"(A) An individual reemployed under such chapter is treated with respect to such plan as not having incurred a break in service with the employer maintaining the plan by reason of such individual's period of qualified military service.

"(B) Each period of qualified military service served by an individual is, upon reemployment under such chapter, deemed with respect to such plan to constitute service with the employer maintaining the plan for the purpose of determining the nonforfeitability of the individual's accrued benefits under such plan and for the purpose of determining the accrual of benefits under such plan.

"(C) An individual reemployed under such chapter is entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals only to the extent the individual makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the individual would have been permitted or required to contribute had the individual remained continuously employed by the employer throughout the period of qualified military service. Any payment to such plan shall be made during the period beginning with the date of reemployment and whose duration is 3 times the period of the qualified military service (but not greater than 5 years).

"(9) REFERENCES.—For purposes of this section, any reference to chapter 43 of title 38, United States Code, shall be treated as a reference to such chapter as in effect on December 12, 1994 (without regard to any subsequent amendment)."

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective as of December 12, 1994.

Subtitle E—Tax Information Sharing

SEC. 13501. DISCLOSURE OF RETURN INFORMATION FOR ADMINISTRATION OF CERTAIN VETERANS PROGRAMS.

(a) GENERAL RULE.—Subparagraph (D) of section 6103(l)(7) (relating to disclosure of return information to Federal, State, and local agencies administering certain programs) is amended by striking "Clause (viii) shall not apply after September 30, 1998."

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

Subtitle F—Revenue Increases

PART I—PROVISIONS RELATING TO BUSINESSES

SEC. 13601. TAX TREATMENT OF CERTAIN EXTRAORDINARY DIVIDENDS.

(a) TREATMENT OF EXTRAORDINARY DIVIDENDS IN EXCESS OF BASIS.—Paragraph (2) of section 1059(a) (relating to corporate shareholder's basis in stock reduced by nontaxed portion of extraordinary dividends) is amended to read as follows:

"(2) AMOUNTS IN EXCESS OF BASIS.—If the nontaxed portion of such dividends exceeds such basis, such excess shall be treated as gain from the sale or exchange of such stock for the taxable year in which the extraordinary dividend is received."

(b) TREATMENT OF REDEMPTIONS WHERE OPTIONS INVOLVED.—Paragraph (1) of section 1059(e) (relating to treatment of partial liquidations and non-pro rata redemptions) is amended to read as follows:

"(1) TREATMENT OF PARTIAL LIQUIDATIONS AND CERTAIN REDEMPTIONS.—Except as otherwise provided in regulations—

"(A) REDEMPTIONS.—In the case of any redemption of stock—

"(i) which is part of a partial liquidation (within the meaning of section 302(e)) of the redeeming corporation,

"(ii) which is not pro rata as to all shareholders, or

"(iii) which would not have been treated (in whole or in part) as a dividend if any options had not been taken into account under section 318(a)(4),

any amount treated as a dividend with respect to such redemption shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock. In the case of a redemption described in clause (iii), only the basis in the stock redeemed shall be taken into account under subsection (a).

"(B) REORGANIZATIONS, ETC.—An exchange described in section 356(a)(1) which is treated as a dividend under section 356(a)(2) shall be treated as a redemption of stock for purposes of applying subparagraph (A)."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to distributions after May 3, 1995.

(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution made pursuant to the terms of—

(A) a written binding contract in effect on May 3, 1995, and at all times thereafter before such distribution, or

(B) a tender offer outstanding on May 3, 1995.

(3) CERTAIN DIVIDENDS NOT PURSUANT TO CERTAIN REDEMPTIONS.—In determining whether the amendment made by subsection (a) applies to any extraordinary dividend other than a dividend treated as an extraordinary dividend under section 1059(e)(1) of the Internal Revenue Code of 1986 (as amended by this Act), paragraphs (1) and (2) shall be applied by substituting "September 13, 1995" for "May 3, 1995".

SEC. 13602. REGISTRATION OF CONFIDENTIAL CORPORATE TAX SHELTERS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

"(d) CERTAIN CONFIDENTIAL ARRANGEMENTS TREATED AS TAX SHELTERS.—

"(1) IN GENERAL.—For purposes of this section, the term 'tax shelter' includes any entity, plan, arrangement, or transaction—

"(A) a significant purpose of which is the avoidance or evasion of Federal income tax for a participant which is a corporation,

"(B) which is offered to any potential participant under conditions of confidentiality, and

"(C) for which the tax shelter organizers may receive fees in excess of $100,000 in the aggregate.

"(2) CONDITIONS OF CONFIDENTIALITY.—For purposes of paragraph (1)(C), an offer is under conditions of confidentiality if—

"(A) the potential participant to whom the offer is made (or any other person acting on behalf of such participant) has an understanding or agreement with or for the benefit of any promoter of the tax shelter that such participant (or other person) will limit disclosure of the tax shelter or any significant tax features of the tax shelter, or

"(B) any promoter of the tax shelter—

"(i) claims, knows, or has reason to know,

"(ii) knows or has reason to know that any other person (other than the potential participant) claims, or

"(iii) causes another person to claim,

that the tax shelter (or any aspect thereof) is proprietary to any person other than the potential participant or is otherwise protected from disclosure to or use by others.

For purposes of this subsection, the term 'promoter' means any person who participates in the organization, management, or sale of the tax shelter.

"(3) PERSONS OTHER THAN ORGANIZER REQUIRED TO REGISTER IN CERTAIN CASES.—

"(A) IN GENERAL.—If—

"(i) the requirements of subsection (a) are not met with respect to any tax shelter (as defined in paragraph (1)) by any tax shelter organizer, and

"(ii) no tax shelter organizer is a United States person,

then each United States person who discussed participation in such shelter shall register such shelter under subsection (a).

"(B) EXCEPTION.—Subparagraph (A) shall not apply to a United States person who discussed participation in a tax shelter if—

"(i) such person notified the promoter in writing (not later than the close of the day on which such discussions began) that such person would not participate in such shelter, and

"(ii) such person does not participate in such shelter.

"(4) OFFER TO PARTICIPATE TREATED AS OFFER FOR SALE.—For purposes of subsections (a) and (b), an offer to participate in a tax shelter (as defined in paragraph (1)) shall be treated as an offer for sale."

(b) PENALTY.—Subsection (a) of section 6707 (relating to failure to furnish information regarding tax shelters) is amended by adding at the end the following new paragraph:

"(3) CONFIDENTIAL ARRANGEMENTS.—

"(A) IN GENERAL.—In the case of a tax shelter (as defined in section 6111(d)), the penalty imposed under paragraph (1) shall be an amount equal to the greater of—

"(i) 50 percent of the fees paid to any promoter of the tax shelter with respect to offerings made before the date such shelter is registered under section 6111, or

"(ii) $10,000.

Clause (i) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in paragraph (1).

"(B) SPECIAL RULE FOR PARTICIPANTS REQUIRED TO REGISTER SHELTER.—In the case of a person required to register such a tax shelter by reason of section 6111(d)(3)—

"(i) such person shall be required to pay the penalty under paragraph (1) only if such person actually participated in such shelter,

"(ii) the amount of such penalty shall be determined by taking into account under subparagraph (A)(i) only the fees paid by such person, and

"(iii) such penalty shall be in addition to the penalty imposed on any other person for failing to register such shelter."

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 6707(a) is amended by striking "The penalty" and inserting "Except as provided in paragraph (3), the penalty".

(2) Subparagraph (A) of section 6707(a)(1) is amended by striking "paragraph (2)" and inserting "paragraph (2) or (3), as the case may be".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to any tax shelter (as defined in section 6111(d) of the Internal Revenue Code of 1986, as amended by this section) interests in which are offered to potential participants after the date of the enactment of this Act.

(2) DUE DATE FOR REGISTRATION.—The due date for registering any tax shelter required to be registered by reason of the amendments made by this section shall be not earlier than the close of a reasonable period after the Secretary of the Treasury prescribes guidance with respect to meeting such requirements.

SEC. 13603. DENIAL OF DEDUCTION FOR INTEREST ON LOANS WITH RESPECT TO COMPANY-OWNED INSURANCE.

(a) IN GENERAL.—Paragraph (4) of section 264(a) is amended—

(1) by inserting "or endowment or annuity contract" after "life insurance policies", and

(2) by striking all that follows "carried on by the taxpayer" and inserting a period.

(b) PHASEIN OF DISALLOWANCE.—Section 264 is amended by adding at the end the following new subsection:

"(d) PHASEIN OF DISALLOWANCE UNDER SUBSECTION (a)(4).—In the case of calendar years after 1995 and before 2000—

"(1) IN GENERAL.—The amount of interest paid or accrued during any period in any such calendar year with respect to qualified indebtedness which is disallowed by reason of the amendment made by section 13603(a) of the Revenue Reconciliation Act of 1995 (determined without regard to this subsection) shall not exceed the applicable percentage of such interest which is so disallowed.

"(2) QUALIFIED INDEBTEDNESS.—For purposes of paragraph (1), the term 'qualified indebtedness' means indebtedness incurred before September 18, 1995, with respect to a life insurance policy covering only the life of the individual who was insured under such policy on such date. Any increase on or after such date in the amount of such indebtedness shall be treated as indebtedness incurred after such date.

"(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage shall be determined in accordance with the following table:

"In the case of periods in calendar year:	The applicable percentage is:
1996	20 percent
1997	40 percent
1998	60 percent
1999	80 percent."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to interest paid or accrued after December 31, 1995.

(2) EXCEPTION.—The amendments made by this section shall not apply to contracts purchased on or before June 20, 1986.

(d) 4-YEAR SPREAD OF INCOME INCLUSION ON SURRENDER, ETC. OF CONTRACTS.—

(1) IN GENERAL.—In the case of indebtedness with respect to any life insurance policy described in paragraph (4) of section 264(a) of the Internal Revenue Code of 1986, if—

(A) the interest paid or accrued after December 31, 1995, on such indebtedness is not allowed as a deduction under chapter 1 of such Code by reason of such paragraph (4) (as amended by this section), and

(B) the entire amount of interest paid or accrued on or before such date on such indebtedness was allowed as a deduction under such chapter 1,

then (in lieu of any other inclusion in gross income) the qualified amount with respect to such policy shall be includible in gross income ratably over the 4 taxable years beginning with the taxable year such amount would (but for this paragraph) be includible.

(2) QUALIFIED AMOUNT.—For purposes of paragraph (1), the term "qualified amount" means, with respect to any policy, the amount received under such policy—

(A) on the complete surrender, redemption, or maturity of such policy during 1996, or

(B) in full discharge during 1996 of the obligation under the policy which is in the nature of a refund of the consideration paid for the policy,

but only to the extent such amount is includible in gross income for the taxable year in which the event described in subparagraph (A) or (B) occurs.

(3) SPECIAL RULE.—A contract shall not be treated as failing to meet the requirement of section 264(c)(1) of the Internal Revenue Code of 1986 solely by reason of an occurrence described in subparagraph (A) or (B) of paragraph (2) of this subsection.

SEC. 13604. TERMINATION OF SUSPENSE ACCOUNTS FOR FAMILY CORPORATIONS REQUIRED TO USE ACCRUAL METHOD OF ACCOUNTING.

(a) IN GENERAL.—Subsection (i) of section 447 (relating to method of accounting for corporations engaged in farming) is amended by adding at the end the following new paragraph:

"(7) TERMINATION.—

"(A) IN GENERAL.—No suspense account may be established under this subsection by any corporation required by this section to change its method of accounting for any taxable year ending after September 13, 1995.

"(B) 20-YEAR PHASEOUT OF EXISTING SUSPENSE ACCOUNTS.—Each suspense account under this subsection shall be reduced (but not below zero) for each of the first 20 taxable years beginning after September 13, 1995, by an amount equal to the applicable portion of such account. Any reduction in a suspense account under this paragraph shall be included in gross income for the taxable year of the reduction. The amount of the reduction required under this paragraph for any taxable year shall be reduced (but not below zero) by the amount of any reduction required for such taxable year under any other provision of this subsection.

"(C) APPLICABLE PORTION.—For purposes of subparagraph (B), the term 'applicable portion' means, for any taxable year, the amount which would ratably reduce the amount in the account (after taking into account prior reductions) to zero over the period consisting of such taxable year and the remaining taxable years in such first 20 taxable years."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after September 13, 1995.

SEC. 13605. TERMINATION OF PUERTO RICO AND POSSESSION TAX CREDIT.

(a) IN GENERAL.—Section 936 is amended by adding at the end the following new subsection:

"(j) TERMINATION.—

"(1) IN GENERAL.—This section shall not apply to any taxable year beginning after December 31, 1995.

"(2) EXCEPTION FOR EXISTING CLAIMANTS.—

"(A) IN GENERAL.—Paragraph (1) shall be applied by substituting '2005' for '1995' in the case of an existing credit claimant.

"(B) EXCEPTION TERMINATES IF NEW LINE OF BUSINESS ADDED.—If, after September 13, 1995, a corporation which would (but for this subparagraph) be an existing credit claimant adds a substantial new line of business, such corporation shall cease to be treated as an existing credit claimant as of the close of the taxable year ending before the date of such addition.

"(C) EXISTING CREDIT CLAIMANT.—For purposes of this subsection, the term 'existing credit claimant' means any corporation which satisfied the conditions of both subparagraph (A) and subparagraph (B) of subsection (a)(2) for at least 1 base period year for which such corporation elected the application of this section.

"(3) LIMIT ON CREDIT OF EXISTING CLAIMANTS.—

"(A) IN GENERAL.—In the case of an existing credit claimant, the aggregate amount of income taken into account under subsection (a)(1) for any taxable year beginning after December 31, 1995 (hereinafter in this subsection referred to as the 'current year'), shall not exceed the adjusted base period income of such claimant.

"(B) COORDINATION WITH SUBSECTION (A)(4).—The amount of income described in subsection (a)(1)(A) which is taken into account in applying subsection (a)(4) shall be such income as reduced under this paragraph. In determining such reduction, any reduction under subparagraph (A) in the amount which would otherwise be taken into account under subsection (a)(1) shall be allocated between the income described in subparagraph (A) thereof and the income described in subparagraph (B) thereof in proportion to the respective amounts of such incomes.

"(4) ADJUSTED BASE PERIOD INCOME.—For purposes of paragraph (3)—

"(A) IN GENERAL.—The term 'adjusted base period income' means the average of the inflation-adjusted possession incomes of the corporation for each base period year.

"(B) INFLATION-ADJUSTED POSSESSION INCOME.—For purposes of subparagraph (A), the inflation-adjusted possession income of any corporation for any base period year shall be an amount equal to the possession income of such corporation for such base period year multiplied by the inflation adjustment percentage for such base period year.

"(C) INFLATION ADJUSTMENT PERCENTAGE.—For purposes of subparagraph (B), the inflation adjustment percentage for any base period year means, with respect to the current year, the percentage (if any) by which—

"(i) the CPI for last calendar year ending before the beginning of the current year, exceeds "(ii) the CPI for last calendar year ending before the beginning of the base period year.

For purposes of the preceding sentence, the CPI for any calendar year is the CPI (as defined in section 1(f)(5)) for such year under section 1(f)(4).

"(D) INCREASE IN INFLATION ADJUSTMENT PERCENTAGE FOR GROWTH DURING BASE YEARS.—The inflation adjustment percentage (determined under subparagraph (C) without regard to this subparagraph) for each of the 5 taxable years referred to in paragraph (5)(A) shall be increased by—

"(i) 5 percentage points in the case of a taxable year ending during the 1-year period ending on September 12, 1995;

"(ii) 10.25 percentage points in the case of a taxable year ending during the 1-year period ending on September 12, 1994;

"(iii) 15.76 percentage points in the case of a taxable year ending during the 1-year period ending on September 12, 1993;

"(iv) 21.55 percentage points in the case of a taxable year ending during the 1-year period ending on September 12, 1992; and

"(v) 27.63 percentage points in the case of a taxable year ending during the 1-year period ending on September 12, 1991.

"(5) BASE PERIOD YEAR.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'base period year' means each of 3 taxable years which are among the 5 most recent taxable years of the corporation ending before September 13, 1995, determined by disregarding—

"(i) one taxable year for which the corporation had the largest inflation-adjusted possession income, and

"(ii) one taxable year for which the corporation had the smallest inflation-adjusted possession income.

"(B) CORPORATIONS NOT HAVING SIGNIFICANT POSSESSION INCOME THROUGHOUT 5-YEAR PERIOD.—

"(i) IN GENERAL.—If a corporation does not have significant possession income for each of the most recent 5 taxable years ending before September 13, 1995, then, in lieu of applying subparagraph (A), the term 'base period year' means only those taxable years (of such 5 taxable years) for which the corporation has significant possession income; except that, if such corporation has significant possession income for 4 of such 5 taxable years, the rule of subparagraph (A)(ii) shall apply.

"(ii) SPECIAL RULE.—If there is no year (of such 5 taxable years) for which a corporation has significant possession income—

"(I) the term 'base period year' means the first taxable year ending on or after September 13, 1995, but

"(II) the amount of possession income for such year which is taken into account under paragraph (4) shall be the amount which would be determined if such year were a short taxable year ending on August 31, 1995.

"(iii) SIGNIFICANT POSSESSION INCOME.—For purposes of this subparagraph, the term 'significant possession income' means possession income which exceeds 2 percent of the possession income of the taxpayer for the taxable year (of the period of 6 taxable years ending with the first taxable year ending on or after September 13, 1995) having the greatest possession income.

"(C) ELECTION TO USE ONE BASE PERIOD YEAR.—

"(i) IN GENERAL.—At the election of the taxpayer, the term 'base period year' means only the last taxable year of the corporation ending in calendar year 1992.

"(ii) ELECTION.—An election under this subparagraph by any possession corporation may be made only for the corporation's first taxable year beginning after December 31, 1995, for which it is a possession corporation. The rules of subclauses (II) and (III) of subsection (a)(4)(B)(iii) shall apply to the election under this subparagraph.

"(D) ACQUISITIONS AND DISPOSITIONS.—Rules similar to the rules of subparagraphs (A) and (B) of section 41(f)(3) shall apply for purposes of this subsection.

"(6) POSSESSION INCOME.—For purposes of this subsection, the term 'possession income' means the sum of the income referred to in subsection (a)(1)(A) and the income referred to in subsection (a)(1)(B). In no event shall possession income be treated as being less than zero.

"(7) SHORT YEARS.—If the current year or a base period year is a short taxable year, the application of this subsection shall be made with such annualizations as the Secretary shall prescribe."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 13606. DEPRECIATION UNDER INCOME FORECAST METHOD.

(a) GENERAL RULE.—Section 167 (relating to depreciation) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) DEPRECIATION UNDER INCOME FORECAST METHOD.—

"(1) IN GENERAL.—If the depreciation deduction allowable under this section to any taxpayer with respect to any property is determined under the income forecast method or any similar method—

"(A) in determining the amount of the depreciation deduction under such method, the estimated income from the property shall include all estimated income from use of the property,

"(B) the adjusted basis of the property shall only include amounts with respect to which the requirements of section 461(h) are satisfied,

"(C) the depreciation deduction under such method for the 10th taxable year beginning after the taxable year in which the property was placed in service shall be equal to the adjusted basis of such property as of the beginning of such 10th taxable year, and

"(D) such taxpayer shall pay (or be entitled to receive) interest computed under the look-back method of paragraph (2) for any recomputation year.

"(2) LOOK-BACK METHOD.—The interest computed under the look-back method of this paragraph for any recomputation year shall be determined by—

"(A) first determining the depreciation deductions under this section with respect to such property which would have been allowable for prior taxable years if the determination of the amounts so allowable had been made on the basis of the sum of the following (instead of the estimated income with respect to such property)—

"(i) the actual income from such property for periods before the close of the recomputation year, and

"(ii) an estimate of the future income with respect to such property for periods after the recomputation year,

"(B) second, determining (solely for purposes of computing such interest) the overpayment or underpayment of tax for each such prior taxable year which would result solely from the application of subparagraph (A), and

"(C) then using the adjusted overpayment rate (as defined in section 460(b)(7)), compounded daily, on the overpayment or underpayment determined under subparagraph (B).

For purposes of the preceding sentence, any cost incurred after the property is placed in service (which is not treated as a separate property under paragraph (5)) shall be taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time such cost is incurred) such cost to its value as of the date the property is placed in service. The taxpayer may elect with respect to any property to have the preceding sentence not apply to such property.

"(3) EXCEPTION FROM LOOK-BACK METHOD.—Paragraph (1)(D) shall not apply with respect to any property which, when placed in service by the taxpayer, had a basis of $100,000 or less.

"(4) RECOMPUTATION YEAR.—For purposes of this subsection, except as provided in regulations, the term 'recomputation year' means, with respect to any property, the third and the 10th taxable years beginning after the taxable year in which the property was placed in service, unless the actual income from the property for such third or 10th taxable year (as the case may be) and each prior taxable year is within 10 percent of the estimated income from the property for each such year which was taken into account under paragraph (1)(A).

"(5) SPECIAL RULES.—

"(A) CERTAIN COSTS TREATED AS SEPARATE PROPERTY.—For purposes of this section, the following costs shall be treated as separate properties:

"(i) Any costs incurred with respect to any property after the 10th taxable year beginning after the taxable year in which the property was placed in service.

"(ii) Any costs incurred after the property is placed in service and before the close of such 10th taxable year if such costs are significant and give rise to a significant increase in the income from the property which was not included in the estimated income from the property.

"(B) SYNDICATION INCOME FROM TELEVISION SERIES.—In the case of property which is an episode in a television series, estimated income from syndicating such series shall not be required to be taken into account under this subsection before the earlier of—

"(i) the 4th taxable year beginning after the date the first episode in such series is placed in service, or

"(ii) the earliest taxable year in which the taxpayer had a reasonable expectation that there would be a future syndication of such series.

"(C) COLLECTION OF INTEREST.—For purposes of subtitle F (other than sections 6654 and 6655), any interest required to be paid by the taxpayer under paragraph (1) for any recomputation year shall be treated as an increase in the tax imposed by this chapter for such year.

"(D) DETERMINATIONS.—For purposes of this subsection, determinations of the amount of income from any property shall be determined in the same manner as for purposes of applying the income forecast method; except that any income from the disposition of such property shall be taken into account.

"(E) TREATMENT OF PASS-THRU ENTITIES.—Rules similar to the rules of section 460(b)(4) shall apply for purposes of this subsection."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to property placed in service after September 13, 1995.

(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply to any property produced or acquired by the taxpayer pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such production or acquisition.

SEC. 13607. TRANSFERS OF EXCESS PENSION ASSETS.

(a) IN GENERAL.—Section 420 (relating to transfers of excess pension assets to retiree health accounts) is amended by adding at the end the following new subsection:

"(f) SIMILAR RULES TO APPLY TO OTHER TRANSFERS OF EXCESS PLAN ASSETS.—

"(1) IN GENERAL.—If there is a qualified unrestricted transfer of any excess pension assets of a defined benefit plan (other than a multiemployer plan) to an employer—

"(A) a trust which is part of such plan shall not be treated as failing to meet the requirements of section 401(a) or any other provision of law solely by reason of such transfer (or any other action authorized under this section), and

"(B) such transfer shall not be treated as a prohibited transaction for purposes of section 4975.

The gross income of the employer shall include the amount of any qualified transfer made during the taxable year.

"(2) QUALIFIED UNRESTRICTED TRANSFER.—For purposes of this section—

"(A) IN GENERAL.—The term 'qualified unrestricted transfer' means a transfer—

"(i) of excess pension assets of a defined benefit plan to the employer, and

"(ii) with respect to which the requirements of subsection (c)(2)(A) are met (determined by treating such transfer as a qualified transfer).

"(B) COORDINATION WITH TRANSFERS TO RETIREE HEALTH ACCOUNTS.—Such term shall not include any qualified transfer (as defined in subsection (b)).

"(C) EXPIRATION.—No transfer in any taxable year beginning after December 31, 2000, shall be treated as a qualified unrestricted transfer.

"(3) DEFINITION AND SPECIAL RULE.—For purposes of this subsection—

"(A) EXCESS PENSION ASSETS.—The term 'excess pension assets' has the meaning given such term by subsection (e)(2); except that the amount thereof shall be the lesser of—

"(i) the amount determined as of the most recent valuation date of the plan preceding the transfer, or

"(ii) the amount determined as of January 1, 1995 (or, if January 1, 1995, is not a valuation date, the most recent prior valuation date).

"(B) COORDINATION WITH SECTION 412.—In the case of a qualified unrestricted transfer—

"(i) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of section 412, be treated as assets in the plan as of the valuation date for such year, and

"(ii) the plan shall be treated as having a net experience loss under section 412(b)(2)(B)(iv) in an amount equal to the amount of such transfer and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such section shall be applied to such amount by substituting '10 plan years' for '5 plan years'.

"(C) TREATMENT OF TRANSFERS.—Except for purposes of this section, a qualified unrestricted transfer shall be treated as a qualified transfer to a health benefits account."

(b) REVERSION TAX.—Section 4980 (relating to tax on reversion of qualified plan assets to employers) is amended by adding at the end the following new subsection:

"(e) SPECIAL RULES FOR QUALIFIED UNRESTRICTED TRANSFERS UNDER SECTION 420.—In the case of a qualified unrestricted transfer to which section 420(f) applies—

"(1) no tax shall be imposed by subsection (a) if such transfer occurs before July 1, 1996,

"(2) subsection (a) shall be applied by substituting '6.5 percent' for '20 percent' if such transfer occurs after June 30, 1996, and

"(3) subsection (d) shall not apply."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1995.

PART II—LEGAL REFORMS

SEC. 13611. REPEAL OF EXCLUSION FOR PUNITIVE DAMAGES AND FOR DAMAGES NOT ATTRIBUTABLE TO PHYSICAL INJURIES OR SICKNESS.

(a) IN GENERAL.—Paragraph (2) of section 104(a) (relating to compensation for injuries or sickness) is amended to read as follows:

"(2) the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;".

(b) EMOTIONAL DISTRESS AS SUCH TREATED AS NOT PHYSICAL INJURY OR PHYSICAL SICKNESS.—Section 104(a) is amended by striking the last sentence and inserting the following new sentence: "For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213(d)(1)) attributable to emotional distress."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts received after December 31, 1995, in taxable years ending after such date.

(2) EXCEPTION.—The amendments made by this section shall not apply to any amount received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995.

SEC. 13612. REPORTING OF CERTAIN PAYMENTS MADE TO ATTORNEYS.

(a) IN GENERAL.—Section 6045 (relating to returns of brokers) is amended by adding at the end the following new subsection:

"(f) RETURN REQUIRED IN THE CASE OF PAYMENTS TO ATTORNEYS.—

"(1) IN GENERAL.—Any person engaged in a trade or business and making a payment (in the course of such trade or business) to which this subsection applies shall file a return under subsection (a) and a statement under subsection (b) with respect to such payment.

"(2) APPLICATION OF SUBSECTION.—

"(A) IN GENERAL.—This subsection shall apply to any payment to an attorney in connection with legal services (whether or not such services are performed for the payor).

"(B) EXCEPTION.—This subsection shall not apply to the portion of any payment which is required to be reported under section 6041(a) (or would be so required but for the dollar limitation contained therein) or section 6051."

(b) REPORTING OF ATTORNEYS FEES PAYABLE TO CORPORATIONS.—The regulations providing an exception under section 6041 of the Internal Revenue Code of

1986 for payments made to corporations shall not apply to payments of attorneys fees.

(c) EFFECTIVE DATE.—The amendment made by subsection (a), and subsection (b), shall apply to payments made after December 31, 1995.

PART III—TREATMENT OF INDIVIDUALS WHO LOSE UNITED STATES CITIZENSHIP

SEC. 13616. REVISION OF INCOME, ESTATE, AND GIFT TAXES ON INDIVIDUALS WHO LOSE UNITED STATES CITIZENSHIP.

(a) IN GENERAL.—Subsection (a) of section 877 is amended to read as follows:

"(a) TREATMENT OF EXPATRIATES.—

"(1) IN GENERAL.—Every nonresident alien individual who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship, unless such loss did not have for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle B, shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

"(2) CERTAIN INDIVIDUALS TREATED AS HAVING TAX AVOIDANCE PURPOSE.—For purposes of paragraph (1), an individual shall be treated as having a principal purpose to avoid such taxes if—

"(A) the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $100,000, or

"(B) the net worth of the individual as of such date is $500,000 or more.

In the case of the loss of United States citizenship in any calendar year after 1996, such $100,000 and $500,000 amounts shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting '1994' for '1992' in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of $1,000."

(b) EXCEPTIONS.—

(1) IN GENERAL.—Section 877 is amended by striking subsection (d), by redesignating subsection (c) as subsection (d), and by inserting after subsection (b) the following new subsection:

"(c) TAX AVOIDANCE NOT PRESUMED IN CERTAIN CASES.—

"(1) IN GENERAL.—Subsection (a)(2) shall not apply to an individual if—

"(A) such individual is described in a subparagraph of paragraph (2) of this subsection, and

"(B) within the 1-year period beginning on the date of the loss of United States citizenship, such individual submits a ruling request for the Secretary's determination as to whether such loss has for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle B.

"(2) INDIVIDUALS DESCRIBED.—

"(A) DUAL CITIZENSHIP, ETC.—An individual is described in this subparagraph if—

"(i) the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, or

"(ii) the individual becomes (not later than the close of a reasonable period after loss of United States citizenship) a citizen of the country in which—

"(I) such individual was born,

"(II) if such individual is married, such individual's spouse was born, or

"(III) either of such individual's parents were born.

"(B) LONG-TERM FOREIGN RESIDENTS.—An individual is described in this subparagraph if, for each year in the 10-year period ending on the date of loss of United States citizenship, the individual was present in the United States for 30 days or less. The rule of section 7701(b)(3)(D)(ii) shall apply for purposes of this subparagraph.

"(C) RENUNCIATION UPON REACHING AGE OF MAJORITY.—An individual is described in this subparagraph if the individual's loss of United States citizenship occurs before such individual attains age 18½.

"(D) INDIVIDUALS SPECIFIED IN REGULATIONS.—An individual is described in this subparagraph if the individual is described in a category of individuals prescribed by regulation by the Secretary."

(2) TECHNICAL AMENDMENT.—Paragraph (1) of section 877(b) of such Code is amended by striking "subsection (c)" and inserting "subsection (d)".

(c) TREATMENT OF PROPERTY DISPOSED OF IN NONRECOGNITION TRANSACTIONS; TREATMENT OF DISTRIBUTIONS FROM CERTAIN CONTROLLED FOREIGN CORPORATIONS.—Subsection (d) of section 877, as redesignated by subsection (b), is amended to read as follows:

"(d) SPECIAL RULES FOR SOURCE, ETC.—For purposes of subsection (b)—

"(1) SOURCE RULES.—The following items of gross income shall be treated as income from sources within the United States:

"(A) SALE OF PROPERTY.—Gains on the sale or exchange of property (other than stock or debt obligations) located in the United States.

"(B) STOCK OR DEBT OBLIGATIONS.—Gains on the sale or exchange of stock issued by a domestic corporation or debt obligations of United States persons or of the United States, a State or political subdivision thereof, or the District of Columbia.

"(C) INCOME OR GAIN DERIVED FROM CONTROLLED FOREIGN CORPORATION.—Any income or gain derived from stock in a foreign corporation but only—

"(i) if the individual losing United States citizenship owned (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), at any time during the 2-year period ending on the date of the loss of United States citizenship, more than 50 percent of—

"(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

"(II) the total value of the stock of such corporation, and

"(ii) to the extent such income or gain does not exceed the earnings and profits attributable to such stock which were earned or accumulated before the loss of citizenship and during periods that the ownership requirements of clause (i) are met.

"(2) GAIN RECOGNITION ON CERTAIN EXCHANGES.—

"(A) IN GENERAL.—In the case of any exchange of property to which this paragraph applies, notwithstanding any other provision of this title, such property shall be treated as sold for its fair market value on the date of such exchange, and any gain shall be recognized for the taxable year which includes such date.

"(B) EXCHANGES TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any exchange during the 10-year period described in subsection (a) if—

"(i) gain would not (but for this paragraph) be recognized on such exchange in whole or in part for purposes of this subtitle,

"(ii) income derived from such property was from sources within the United States (or, if no income was so derived, would have been from such sources), and

"(iii) income derived from the property acquired in the exchange would be from sources outside the United States.

"(C) EXCEPTION.—Subparagraph (A) shall not apply if the individual enters into an agreement with the Secretary which specifies that any income or gain derived from the property acquired in the exchange (or any other property which has a basis determined in whole or part by reference to such property) during such 10-year period shall be treated as from sources within the United States. If the property transferred in the exchange is disposed of by the person acquiring such property, such agreement shall terminate and any gain which was not recognized by reason of such agreement shall be recognized as of the date of such disposition.

"(D) SECRETARY MAY EXTEND PERIOD.—To the extent provided in regulations prescribed by the Secretary, subparagraph (B) shall be applied by substituting the 15-year period beginning 5 years before the loss of United States citizenship for the 10-year period referred to therein.

"(E) SECRETARY MAY REQUIRE RECOGNITION OF GAIN IN CERTAIN CASES.—To the extent provided in regulations prescribed by the Secretary—

"(i) the removal of appreciated tangible personal property from the United States, and

"(ii) any other occurrence which (without recognition of gain) results in a change in the source of the income or gain from property from sources within the United States to sources outside the United States,

shall be treated as an exchange to which this paragraph applies.

"(3) SUBSTANTIAL DIMINISHING OF RISKS OF OWNERSHIP.—For purposes of determining whether this section applies to any gain on the sale or exchange of any property, the running of the 10-year period described in subsection (a) shall be suspended for any period during which the individual's risk of loss with respect to the property is substantially diminished by—

"(A) the holding of a put with respect to such property (or similar property),

"(B) the holding by another person of a right to acquire the property, or

"(C) a short sale or any other transaction."

(d) CREDIT FOR FOREIGN TAXES IMPOSED ON UNITED STATES SOURCE INCOME.—

(1) Subsection (b) of section 877 is amended by adding at the end the following new sentence: "The tax imposed solely by reason of this section shall be reduced (but not below zero) by the amount of any income, war profits, and excess profits taxes (within the meaning of section 903) paid to any foreign country or possession of the United States on any income of the taxpayer on which tax is imposed solely by reason of this section."

(2) Subsection (a) of section 877, as amended by subsection (a), is amended by inserting "(after any reduction in such tax under the last sentence of such subsection)" after "such subsection".

(e) COMPARABLE ESTATE AND GIFT TAX TREATMENT.—

(1) ESTATE TAX.—

(A) IN GENERAL.—Subsection (a) of section 2107 is amended to read as follows:

"(a) TREATMENT OF EXPATRIATES.—

"(1) RATE OF TAX.—A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States if, within the 10-year period ending with the date of death, such decedent lost United States citizenship, unless such loss did not have for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle A.

"(2) CERTAIN INDIVIDUALS TREATED AS HAVING TAX AVOIDANCE PURPOSE.—

"(A) IN GENERAL.—For purposes of paragraph (1), an individual shall be treated as having a principal purpose to avoid such taxes if such individual is so treated under section 877(a)(2).

"(B) EXCEPTION.—Subparagraph (A) shall not apply to a decedent meeting the requirements of section 877(c)(1)."

(B) CREDIT FOR FOREIGN DEATH TAXES.—Subsection (c) of section 2107 is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) CREDIT FOR FOREIGN DEATH TAXES.—

"(A) IN GENERAL.—The tax imposed by subsection (a) shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any foreign country in respect of any property which is included in the gross estate solely by reason of subsection (b).

"(B) LIMITATION ON CREDIT.—The credit allowed by subparagraph (A) for such taxes paid to a foreign country shall not exceed the lesser of—

"(i) the amount which bears the same ratio to the amount of such taxes actually paid to such foreign country in respect of property included in the gross estate as the value of the property included in the gross estate solely by reason of subsection (b) bears to the value of all property subjected to such taxes by such foreign country, or

"(ii) such property's proportionate share of the excess of—

"(I) the tax imposed by subsection (a), over

"(II) the tax which would be imposed by section 2101 but for this section.

"(C) PROPORTIONATE SHARE.—For purposes of subparagraph (B), a property's proportionate share is the percentage which the value of the property which is included in the gross estate solely by reason of subsection (b) bears to the total value of the gross estate."

(C) EXPANSION OF INCLUSION IN GROSS ESTATE OF STOCK OF FOREIGN CORPORATIONS.—Paragraph (2) of section 2107(b) is amended by striking "more than 50 percent of" and all that follows and inserting "more than 50 percent of—

"(A) the total combined voting power of all classes of stock entitled to vote of such corporation, or

"(B) the total value of the stock of such corporation,".

(2) GIFT TAX.—

(A) IN GENERAL.—Paragraph (3) of section 2501(a) is amended to read as follows:

"(3) EXCEPTION.—

"(A) CERTAIN INDIVIDUALS.—Paragraph (2) shall not apply in the case of a donor who, within the 10-year period ending with the date of transfer, lost United States citizenship, unless such loss did not have for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle A.

"(B) CERTAIN INDIVIDUALS TREATED AS HAVING TAX AVOIDANCE PURPOSE.—For purposes of subparagraph (A), an individual shall be treated as having a principal purpose to avoid such taxes if such individual is so treated under section 877(a)(2).

"(C) EXCEPTION FOR CERTAIN INDIVIDUALS.—Subparagraph (B) shall not apply to a decedent meeting the requirements of section 877(c)(1).

"(D) CREDIT FOR FOREIGN GIFT TAXES.—The tax imposed by this section solely by reason of this paragraph shall be credited with the amount of any gift tax actually paid to any foreign country in respect of any gift which is taxable under this section solely by reason of this paragraph."

(f) COMPARABLE TREATMENT OF LAWFUL PERMANENT RESIDENTS WHO CEASE TO BE TAXED AS RESIDENTS.—

(1) IN GENERAL.—Section 877 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) COMPARABLE TREATMENT OF LAWFUL PERMANENT RESIDENTS WHO CEASE TO BE TAXED AS RESIDENTS.—

"(1) IN GENERAL.—Any long-term resident of the United States who—

"(A) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

"(B) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country,

shall be treated for purposes of this section and sections 2107, 2501, and 6039F in the same manner as if such resident were a citizen of the United States who lost United States citizenship on the date of such cessation or commencement.

"(2) LONG-TERM RESIDENT.—For purposes of this subsection, the term 'long-term resident' means any individual (other than a citizen of the United States) who is a lawful permanent resident of the United States in at least 8 taxable years during the period of 15 taxable years ending with the taxable year during which the event described in subparagraph (A) or (B) of paragraph (1) occurs. For purposes of the preceding sentence, an individual shall not be treated as a lawful permanent resident for any taxable year if such individual is treated as a resident of a foreign country for the taxable year under the provisions of a tax treaty between the United States and the foreign country and does not waive the benefits of such treaty applicable to residents of the foreign country.

"(3) SPECIAL RULES.—

"(A) EXCEPTIONS NOT TO APPLY.—Subsection (c) shall not apply to an individual who is treated as provided in paragraph (1).

"(B) STEP-UP IN BASIS.—Solely for purposes of determining any tax imposed by reason of this subsection, property which was held by the long-term resident on the date the individual first became a resident of the United States shall be treated as having a basis on such date of not less than the fair market value of such property on such date. The preceding sentence shall not apply if the individual elects not to have such sentence apply. Such an election, once made, shall be irrevocable.

"(4) AUTHORITY TO EXEMPT INDIVIDUALS.—This subsection shall not apply to an individual who is described in a category of individuals prescribed by regulation by the Secretary.

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations providing for the application of this subsection in cases where an alien individual becomes a resident of the United States during the 10-year period after being treated as provided in paragraph (1)."

(2) CONFORMING AMENDMENTS.—

(A) Section 2107 is amended by striking subsection (d), by redesignating subsection (e) as subsection (d), and by inserting after subsection (d) (as so redesignated) the following new subsection:

"(e) CROSS REFERENCE.—

"For comparable treatment of long-term lawful permanent residents who ceased to be taxed as residents, see section 877(e)."

(B) Paragraph (3) of section 2501(a) (as amended by subsection (e)) is amended by adding at the end the following new subparagraph:

"(E) CROSS REFERENCE.—

"For comparable treatment of long-term lawful permanent residents who ceased to be taxed as residents, see section 877(e)."

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to—

(A) individuals losing United States citizenship (within the meaning of section 877 of the Internal Revenue Code of 1986) on or after February 6, 1995, and

(B) long-term residents of the United States with respect to whom an event described in subparagraph (A) or (B) of section 877(e)(1) of such Code occurs on or after June 13, 1995.

(2) SPECIAL RULE.—

(A) IN GENERAL.—In the case of an individual who performed an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)) before February 6, 1995, but who did not, on or before such date, furnish to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of such act, the amendments made by this section shall apply to such individual except that—

(i) the 10-year period described in section 877(a) of such Code shall not expire before the end of the 10-year period beginning on the date such statement is so furnished, and

(ii) the 1-year period referred to in section 877(c) of such Code, as amended by this section, shall not expire before the date which is 1 year after the date of the enactment of this Act.

(B) EXCEPTION.—Subparagraph (A) shall not apply if the individual establishes to the satisfaction of the Secretary of the Treasury that such loss of United States citizenship occurred before February 6, 1994.

SEC. 13617. INFORMATION ON INDIVIDUALS LOSING UNITED STATES CITIZENSHIP.

(a) IN GENERAL.—Subpart A of part III of subchapter A of chapter 61 is amended by inserting after section 6039E the following new section:

"SEC. 6039F. INFORMATION ON INDIVIDUALS LOSING UNITED STATES CITIZENSHIP.

"(a) IN GENERAL.—Notwithstanding any other provision of law, any individual who loses United States citizenship (within the meaning of section 877(a)) shall provide a statement which includes the information described in subsection (b). Such statement shall be—

"(1) provided not later than the earliest date of any act referred to in subsection (c), and

"(2) provided to the person or court referred to in subsection (c) with respect to such act.

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

"(1) the taxpayer's TIN,

"(2) the mailing address of such individual's principal foreign residence,

"(3) the foreign country in which such individual is residing,

"(4) the foreign country of which such individual is a citizen,

"(5) in the case of an individual having a net worth of at least the dollar amount applicable under section 877(a)(2)(B), information detailing the assets and liabilities of such individual, and

"(6) such other information as the Secretary may prescribe.

"(c) ACTS DESCRIBED.—For purposes of this section, the acts referred to in this subsection are—

"(1) the individual's renunciation of his United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

"(2) the individual's furnishing to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

"(3) the issuance by the United States Department of State of a certificate of loss of nationality to the individual, or

"(4) the cancellation by a court of the United States of a naturalized citizen's certificate of naturalization.

"(d) PENALTY.—Any individual failing to provide a statement required under subsection (a) shall be subject to a penalty for each year (of the 10-year period beginning on the date of loss of United States citizenship) during any portion of which such failure continues in an amount equal to the greater of—

"(1) 5 percent of the tax required to be paid under section 877 for the taxable year ending during such year, or

"(2) $1,000,

unless it is shown that such failure is due to reasonable cause and not to willful neglect.

"(e) INFORMATION TO BE PROVIDED TO SECRETARY.—Notwithstanding any other provision of law—

"(1) any Federal agency or court which collects (or is required to collect) the statement under subsection (a) shall provide to the Secretary—

"(A) a copy of any such statement, and

"(B) the name (and any other identifying information) of any individual refusing to comply with the provisions of subsection (a),

"(2) the Secretary of State shall provide to the Secretary a copy of each certificate as to the loss of American nationality under section 358 of the Immigration and Nationality Act which is approved by the Secretary of State, and

"(3) the Federal agency primarily responsible for administering the immigration laws shall provide to the Secretary the name of each lawful permanent resident of the United States (within the meaning of section 7701(b)(6)) whose status as such has been revoked or has been administratively or judicially determined to have been abandoned.

Notwithstanding any other provision of law, not later than 30 days after the close of each calendar quarter, the Secretary shall publish in the Federal Register the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary receives information under the preceding sentence during such quarter.

"(f) REPORTING BY LONG-TERM LAWFUL PERMANENT RESIDENTS WHO CEASE TO BE TAXED AS RESIDENTS.—In lieu of applying the last sentence of subsection (a), any individual who is required to provide a statement under this section by reason of section 877(e)(1) shall provide such statement with the return of tax imposed by chapter 1 for the taxable year during which the event described in such section occurs.

"(g) EXEMPTION.—The Secretary may by regulations exempt any class of individuals from the requirements of this section if he determines that applying this section to such individuals is not necessary to carry out the purposes of this section."

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

"Sec. 6039F. Information on individuals losing United States citizenship."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) individuals losing United States citizenship (within the meaning of section 877 of the Internal Revenue Code of 1986) after the date of the enactment of this Act, and

(2) long-term residents of the United States with respect to whom an event described in subparagraph (A) or (B) of section 877(e)(1) of such Code occurs after such date.

SEC. 13618. REPORT ON TAX COMPLIANCE BY UNITED STATES CITIZENS AND RESIDENTS LIVING ABROAD.

Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report—

(1) describing the compliance with subtitle A of the Internal Revenue Code of 1986 by citizens and lawful permanent residents of the United States (within the meaning of section 7701(b)(6) of such Code) residing outside the United States, and

(2) recommending measures to improve such compliance (including improved coordination between executive branch agencies).

PART IV—REFORMS RELATING TO ENERGY PROVISIONS

SEC. 13621. TERMINATION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) FACILITIES MUST BE PLACED IN SERVICE BEFORE SEPTEMBER 14, 1995.—Paragraph (3) of section 45(c) (defining qualified facility) is amended by striking "July 1, 1999" and inserting "September 14, 1995".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to taxable years ending after September 13, 1995.

(2) BINDING CONTRACTS.—The amendment made by this section shall not apply to any facility—

(A) which is constructed or acquired by the taxpayer pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such construction or acquisition, and

(B) which is placed in service before September 14, 1996.

SEC. 13622. REDUCTION OF INCENTIVES FOR ALCOHOL FUELS.

(a) DENIAL OF CREDIT FOR ALCOHOL USED TO PRODUCE ETHER.—Subsection (b) of section 40 is amended by adding at the end the following new paragraph:

"(6) DENIAL OF CREDIT FOR ALCOHOL USED TO PRODUCE ETHER.—No credit shall be allowed under this section for alcohol used to produce any ether."

(b) LIMITATION ON ALCOHOL ELIGIBLE FOR CREDIT FOR ALCOHOL USED AS FUEL—

(1) IN GENERAL.—Subparagraph (A) of section 40(d)(1) (defining alcohol) is amended by striking "or" at the end of clause (i), by striking the period at the end of clause (ii) and inserting ", or", and by adding at the end the following new clause:

"(iii) alcohol produced by a still (or other distilling apparatus) placed in service after September 13, 1995."

(2) FUTURE CREDIT LIMITED TO AVERAGE HISTORICAL PRODUCTION.—Section 40 is amended by adding at the end the following new subsection:

"(i) EXPANDED PRODUCTION INELIGIBLE FOR CREDIT.—

"(1) IN GENERAL.—Subsection (a) shall apply to alcohol produced after December 31, 1995, only if the alcohol is designated under this subsection by a producer who is registered under section 4101.

"(2) DESIGNATION BASED ON HISTORICAL PRODUCTION.—The amount of alcohol produced by a producer during any calendar year which may be designated under this subsection by any producer other than an eligible small ethanol producer is the amount equal to the average annual amount of alcohol (as defined in subsection (d)(1)(A) without regard to clause (iii))—

"(A) which was produced by such producer (other than casual off-farm production) during the 3-year period ending on August 31, 1995, and

"(B) which was sold or used by such producer for any purpose described in clause (i) of subsection (b)(4)(B).

For purposes of the preceding sentence, a rule similar to the rule of subsection (b)(4)(D) shall apply.

"(3) PRODUCTION FOR LESS THAN ENTIRE BASE PERIOD.—

"(A) IN GENERAL.—If alcohol is produced by a producer for less than the entire 3-year period referred to in paragraph (2)(A), the average referred to in paragraph (2) shall be treated as being equal to 50 percent of the annual productive capacity of such producer as of September 13, 1995.

"(B) PRODUCER MAY ESTABLISH HIGHER AVERAGE PRODUCTION.—In the case of a producer who produced alcohol during at least the last 3 months of such 3-year period, subparagraph (A) shall be applied by substituting for '50 percent' the percentage established by such producer to the satisfaction of the Secretary as the percentage which such producer's normal alcohol production is of its productive capacity.

"(4) ACQUISITIONS AND DISPOSITIONS.—Rules similar to the rules of subparagraphs (A) and (B) of section 41(f)(3) shall apply for purposes of this subsection."

(3) CONFORMING AMENDMENT.—Paragraph (1) of section 40(g) is amended by striking "clauses (i) and (ii)" and inserting "clauses (i), (ii), and (iii)".

(c) REDUCTION OF CREDIT FOR ETHANOL BY REASON OF CARBON DIOXIDE BY-PRODUCT BENEFIT.—Subsection (h) of section 40 is amended—

(1) by striking "54 cents" each place it appears and inserting "51 cents", and

(2) by striking "40 cents" each place it appears and inserting "38.25 cents".

(d) CONFORMING REDUCTIONS OF OTHER INCENTIVES FOR ETHANOL FUEL.—

(1) REPEAL OF REDUCED RATE ON ETHANOL FUEL PRODUCED OTHER THAN FROM PETROLEUM OR NATURAL GAS.—Subsection (b) of section 4041 is amended to read as follows:

"(b) EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—

"(1) IN GENERAL.—No tax shall be imposed by subsection (a) or (d)(1) on liquids sold for use or used in an off-highway business use.

"(2) TAX WHERE OTHER USE.—If a liquid on which no tax was imposed by reason of paragraph (1) is used otherwise than in an off-highway business use, a tax shall be imposed by paragraph (1)(B), (2)(B), or (3)(A)(ii) of subsection (a) (whichever is appropriate) and by the corresponding provision of subsection (d)(1) (if any).

"(3) OFF-HIGHWAY BUSINESS USE DEFINED.—For purposes of this subsection, the term 'off-highway business use' has the meaning given to such term by section 6421(e)(2); except that such term shall not, for purposes of subsection (a)(1), include use in a diesel-powered train."

(2) REPEAL OF REDUCED RATE ON ETHANOL FUEL PRODUCED FROM NATURAL GAS.—Subsection (m) of section 4041 is amended—

(A) by striking "or ethanol" each place it appears (including the heading of paragraph (2)), and

(B) by striking ", ethanol, or other alcohol" in paragraph (2) and inserting "or other alcohol (other than ethanol)".

(e) CONFORMING AMENDMENTS TO EXCISE TAXES; FUEL ALCOHOL TAXED IN SAME MANNER AS OTHER MOTOR FUELS.—

(1) IN GENERAL.—Paragraph (1) of section 4083(a) (defining taxable fuel) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following:

"(C) fuel alcohol."

(2) FUEL ALCOHOL.—Subsection (a) of section 4083 is amended by adding at the end the following new paragraph:

"(4) FUEL ALCOHOL.—The term 'fuel alcohol' means any alcohol (including ethanol and methanol)—

"(A) which is produced other than from petroleum, natural gas, or coal (including peat), and

"(B) which is withdrawn from the distillery where produced free of tax under chapter 51 by reason of section 5181 or so much of section 5214(a)(1) as relates to fuel use.

Such term shall not include alcohol designated under section 40(i)."

(3) RATE OF TAX.—Clause (i) of section 4081(a)(2)(A) is amended by inserting "or fuel alcohol" after "gasoline".

(4) SPECIAL RULES FOR IMPOSITION OF TAX.—

(A) Paragraph (1) of section 4081(a) is amended by adding at the end the following new subparagraph:

"(C) SPECIAL RULES FOR FUEL ALCOHOL.—In the case of fuel alcohol—

"(i) the distillery where produced shall be treated as a refinery, and

"(ii) subparagraph (B) shall be applied by including transfers by truck or rail in excess of such minimum quantities as the Secretary shall prescribe."

(B) Paragraph (1) of section 4081(b) is amended by inserting "(other than fuel alcohol designated under section 40(i))" after "taxable fuel".

(5) REPEAL OF REDUCED RATES ON ALCOHOL FUELS.—

(A) Section 4041 is amended by striking subsection (k).

(B) Section 4081 is amended by striking subsection (c).

(C) Section 4091 is amended by striking subsection (c).

(6) CONFORMING AMENDMENTS.—

(A) Subsection (c) of section 40 is amended by striking all that follows "application of" and inserting "the last sentence of section 4083(a)(4)".

(B) Paragraph (4) of section 40(d) is amended to read as follows:

"(4) VOLUME OF ALCOHOL.—For purposes of determining under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 5 percent of the volume of such alcohol (including denaturants)."

(C) Paragraph (2) of section 4041(a) is amended by adding at the end the following: "No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081 and the tax thereon was not credited or refunded."

(D) Section 6427 is amended by striking subsection (f).

(E) Subsection (i) of section 6427 is amended by striking paragraph (3).

(F) Paragraph (2) of section 6427(k) is amended by striking "(3)".

(G)(i) Paragraph (1) of section 6427(l) is amended by striking "or" at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph:

"(B) any fuel alcohol (as defined in section 4083) on which tax has been imposed by section 4081, or".

(ii) Paragraph (2) of section 6427(l) is amended by striking "and" at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph:

"(B) in the case of fuel alcohol (as so defined), any use which is exempt from the tax imposed by section 4041(a)(2) other than by reason of a prior imposition of tax, and".

(iii) The heading of subsection (l) of section 6427 is amended by inserting ", FUEL ALCOHOL," after "DIESEL FUEL".

(H) Sections 9503(b)(1)(E) and 9508(b)(2) are each amended by striking "and kerosene" and inserting "kerosene, and fuel alcohol".

(I) Section 9502 is amended by striking subsection (e) and by redesignating subsection (f) as subsection (e).

(J) Subsection (e) of section 9502 (as redesignated by subparagraph (I)) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(K) Subsection (b) of section 9503 is amended by striking paragraph (5).

(L) Paragraph (3) of section 9503(f) is amended to read as follows:

"(3) PARTIALLY EXEMPT METHANOL OR ETHANOL FUEL.—In the case of a rate of tax determined under section 4041(m), the Highway Trust Fund financing rate is the excess (if any) of the rate so determined over—

"(A) 5.55 cents per gallon after September 30, 1993, and before October 1, 1995, and

"(B) 4.3 cents per gallon after September 30, 1995."

(f) INCREASE IN SMALL ETHANOL PRODUCER CREDIT.—Subparagraph (A) of section 40(b)(4) is amended by striking "10 cents" and inserting "13 cents".

(g) EFFECTIVE DATE.—

(1) AMENDMENTS RELATING TO CREDIT.—The amendments made by subsections (a), (b), (c), and (f) shall apply to alcohol produced after December 31, 1995, in taxable years ending after such date.

(2) AMENDMENTS RELATING TO EXCISE TAXES.—The amendments made by subsections (d) and (e) shall take effect on January 1, 1996.

(3) STILLS PLACED IN SERVICE PURSUANT TO BINDING CONTRACTS.—For purposes of subsections (d)(1)(A)(iii) and (i)(3)(A) of section 40 of the Internal Revenue Code of 1986, as amended by this section, a still (or other distilling apparatus) shall be treated as placed in service before September 14, 1995, if such still (or other apparatus)—

(A) is constructed or acquired by the taxpayer pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such construction or acquisition, and

(B) is placed in service before September 14, 1996.

(h) FLOOR STOCK TAXES.—

(1) IMPOSITION OF TAX.—In the case of fuel alcohol which is held on January 1, 1996, by any person, there is hereby imposed a floor stocks tax of 18.4 cents per gallon.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding fuel alcohol on January 1, 1996, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before June 30, 1996.

(3) DEFINITIONS.—For purposes of this subsection—

(A) FUEL ALCOHOL.—The term "fuel alcohol" has the meaning given such term by section 4083 of the Internal Revenue Code of 1986, as amended by this section.

(B) HELD BY A PERSON.—Fuel alcohol shall be considered as "held by a person" if title thereto has passed to such person (whether or not delivery to the person has been made).

(C) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to fuel alcohol held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 of the Internal Revenue Code of 1986 is allowable for such use.

(5) EXCEPTION FOR FUEL HELD IN VEHICLE TANK.—No tax shall be imposed by paragraph (1) on fuel alcohol held in the tank of a motor vehicle or motorboat.

(6) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on fuel alcohol held on January 1, 1996, by any person if the aggregate amount of fuel alcohol held by such person on such date does not exceed 2,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (4) or (5).

(C) CONTROLLED GROUPS.—For purposes of this paragraph—

(i) CORPORATIONS.—

(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

(II) CONTROLLED GROUP.—The term "controlled group" has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in such subsection.

(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

(7) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081.

SEC. 13623. EXCLUSION FOR ENERGY CONSERVATION SUBSIDIES LIMITED TO SUBSIDIES WITH RESPECT TO DWELLING UNITS.

(a) IN GENERAL.—Paragraph (1) of section 136(c) (defining energy conservation measure) is amended by striking "energy demand—" and all that follows and inserting "energy demand with respect to a dwelling unit."

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 136 is amended to read as follows:

"(a) EXCLUSION.—Gross income shall not include the value of any subsidy provided (directly or indirectly) by a public utility to a customer for the purchase or installation of any energy conservation measure."

(2) Paragraph (2) of section 136(c) is amended—

(A) by striking subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively, and

(B) by striking "AND SPECIAL RULES" in the paragraph heading.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received after September 13, 1995, unless received pursuant to a written binding contract in effect on September 13, 1995, and at all times thereafter.

PART V—REFORMS RELATING TO NONRECOGNITION PROVISIONS

SEC. 13626. BASIS ADJUSTMENT TO PROPERTY HELD BY CORPORATION WHERE STOCK IN CORPORATION IS REPLACEMENT PROPERTY UNDER INVOLUNTARY CONVERSION RULES.

(a) IN GENERAL.—Subsection (b) of section 1033 is amended to read as follows:

"(b) BASIS OF PROPERTY ACQUIRED THROUGH INVOLUNTARY CONVERSION.—

"(1) CONVERSIONS DESCRIBED IN SUBSECTION (a)(1).—If the property was acquired as the result of a compulsory or involuntary conversion described in subsection (a)(1), the basis shall be the same as in the case of the property so converted—

"(A) decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and

"(B) increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made.

"(2) CONVERSIONS DESCRIBED IN SUBSECTION (a)(2).—In the case of property purchased by the taxpayer in a transaction described in subsection (a)(2) which resulted in the nonrecognition of any part of the gain realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than 1 piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

"(3) PROPERTY HELD BY CORPORATION THE STOCK OF WHICH IS REPLACEMENT PROPERTY.—

"(A) IN GENERAL.—If the basis of stock in a corporation is decreased under paragraph (2), an amount equal to such decrease shall also be applied to reduce the basis of property held by the corporation at the time the taxpayer acquired control (as defined in subsection (a)(2)(E)) of such corporation.

"(B) LIMITATION.—Subparagraph (A) shall not apply to the extent that it would (but for this subparagraph) require a reduction in the aggregate adjusted bases of the property of the corporation below the taxpayer's adjusted basis of the stock in the corporation (determined immediately after such basis is decreased under paragraph (2)).

"(C) ALLOCATION OF BASIS REDUCTION.—The decrease required under subparagraph (A) shall be allocated—

"(i) first to property which is similar or related in service or use to the converted property,

"(ii) second to depreciable property (as defined in section 1017(b)(3)(B)) not described in clause (i), and

"(iii) then to other property.

"(D) SPECIAL RULES.—

"(i) REDUCTION NOT TO EXCEED ADJUSTED BASIS OF PROPERTY.—No reduction in the basis of any property under this paragraph shall exceed the adjusted basis of such property (determined without regard to such reduction).

"(ii) ALLOCATION OF REDUCTION AMONG PROPERTIES.—If more than 1 property is described in a clause of subparagraph (C), the reduction under this paragraph shall be allocated among such property in proportion to the adjusted bases of such property (determined without regard to such reduction)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to involuntary conversions occurring after September 13, 1995.

SEC. 13627. EXPANSION OF REQUIREMENT THAT INVOLUNTARILY CONVERTED PROPERTY BE REPLACED WITH PROPERTY ACQUIRED FROM AN UNRELATED PERSON.

(a) IN GENERAL.—Subsection (i) of section 1033 is amended to read as follows:

"(i) REPLACEMENT PROPERTY MUST BE ACQUIRED FROM UNRELATED PERSON IN CERTAIN CASES.—

"(1) IN GENERAL.—If the property which is involuntarily converted is held by a taxpayer to which this subsection applies, subsection (a) shall not apply if the replacement property or stock is acquired from a related person. The preceding sentence shall not apply to the extent that the related person acquired the replacement property or stock from an unrelated person during the period applicable under subsection (a)(2)(B).

"(2) TAXPAYERS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to—

"(A) a C corporation,

"(B) a partnership in which 1 or more C corporations own, directly or indirectly (determined in accordance with section 707(b)(3)), more than 50 percent of the capital interest, or profits interest, in such partnership at the time of the involuntary conversion, and

"(C) any other taxpayer if, with respect to property which is involuntarily converted during the taxable year, the aggregate of the amount of realized gain on such property on which there is realized gain exceeds $100,000.

In the case of a partnership, subparagraph (C) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

"(3) RELATED PERSON.—For purposes of this subsection, a person is related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to involuntary conversions occurring after September 13, 1995.

SEC. 13628. NO ROLLOVER OR EXCLUSION OF GAIN ON SALE OF PRINCIPAL RESIDENCE WHICH IS ATTRIBUTABLE TO DEPRECIATION DEDUCTIONS.

(a) IN GENERAL.—Subsection (d) of section 1034 (relating to limitations) is amended by adding at the end the following new paragraph:

"(3) RECOGNITION OF GAIN ATTRIBUTABLE TO DEPRECIATION.—Subsection (a) shall not apply to so much of the gain from the sale of any residence as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after December 31, 1995, in respect of such residence."

(b) COMPARABLE TREATMENT UNDER 1-TIME EXCLUSION OF GAIN ON SALE OF PRINCIPAL RESIDENCE.—Subsection (d) of section 121 is amended by adding at the end the following new paragraph:

"(10) RECOGNITION OF GAIN ATTRIBUTABLE TO DEPRECIATION.—

"(A) IN GENERAL.—Subsection (a) shall not apply to so much of the gain from the sale of any property as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after December 31, 1995, in respect of such property.

"(B) COORDINATION WITH PARAGRAPH (5).—If this section does not apply to gain attributable to a portion of a residence by reason of paragraph (5), subparagraph (A) shall not apply to depreciation adjustments attributable to such portion."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1995.

SEC. 13629. NONRECOGNITION OF GAIN ON SALE OF PRINCIPAL RESIDENCE BY NONCITIZENS LIMITED TO NEW RESIDENCES LOCATED IN THE UNITED STATES.

(a) IN GENERAL.—Subsection (d) of section 1034 (relating to limitations) (as amended by section 13628) is amended by adding at the end the following new paragraph:

"(4) NEW RESIDENCE MUST BE LOCATED IN UNITED STATES IN CERTAIN CASES.—

"(A) IN GENERAL.—In the case of a sale of an old residence by a taxpayer—

"(i) who is not a citizen of the United States at the time of sale, and

"(ii) who is not a citizen or resident of the United States on the date which is 2 years after the date of the sale of such old residence,

subsection (a) shall apply only if the new residence is located in the United States or a possession of the United States.

"(B) PROPERTY HELD JOINTLY BY HUSBAND AND WIFE.—Subparagraph (A) shall not apply if—

"(i) the old residence is held by a husband and wife as joint tenants, tenants by the entirety, or community property,

"(ii) such husband and wife make a joint return for the taxable year of the sale or exchange, and

"(iii) one spouse is a citizen of the United States at the time of sale."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to sales of old residences after December 31, 1995.

(2) TREATMENT OF PURCHASES OF NEW RESIDENCES.—The amendment made by this section shall not apply to new residences—

(A) purchased before September 13, 1995, or

(B) purchased on or after such date pursuant to a binding contract in effect on such date and at all times thereafter before such purchase.

(3) CERTAIN RULES TO APPLY.—For purposes of this subsection, the rules of paragraphs (1), (2), and (3) of section 1034(c) of the Internal Revenue Code of 1986 shall apply.

PART VI—REFORMS RELATING TO GAMING ACTIVITIES

SEC. 13631. TREATMENT OF INDIAN GAMING ACTIVITIES UNDER UNRELATED BUSINESS INCOME TAX.

(a) IN GENERAL.—Paragraph (2) of section 511(a) (relating to imposition of tax on unrelated business income of charitable, etc., organizations) is amended by adding at the end the following new subparagraph:

"(C) GAMING ACTIVITIES OF INDIAN TRIBES.—

"(i) IN GENERAL.—The tax imposed by paragraph (1) shall apply to any Indian tribal organization; except that, notwithstanding any other provision of this part, in the case of such an organization, the term 'unrelated trade or business' means only a trade or business of conducting any class II or class III gaming activity (as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), as in effect on the date of the enactment of this subparagraph), including a gaming activity described in section 513(a)(1).

"(ii) INDIAN TRIBAL ORGANIZATION.—For purposes of clause (i), the term 'Indian tribal organization' means any Indian tribe and any organization which is immune or exempt from tax under this subtitle solely by reason of being owned or controlled by an Indian tribe."

(b) TREATMENT OF AMOUNTS PAID FOR CHARITABLE PURPOSES, ETC., BY REASON OF STATE OR FEDERAL LAW.—Subsection (b) of section 512 is amended by adding at the end the following new paragraph:

"(17) In the case of an Indian tribal organization (as defined in section 511(a)(3)), if, by reason of State or Federal law or of a contract with the United States or with any State or political subdivision thereof, such organization is required to use any portion of the net proceeds of any gaming activity for specified purposes, the deduction for so using such proceeds shall be treated as allowed under section 170 for purposes of applying paragraph (10). The preceding sentence shall not apply to such proceeds which are paid as general revenues to the United States or to any State or political subdivision thereof."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996.

(d) STUDY OF GAMBLING CONDUCTED BY TAX-EXEMPT ORGANIZATIONS.—The Secretary of the Treasury or his delegate shall conduct a study on the nature and extent of gaming activities conducted by organizations exempt from tax under section 501(a) of the Internal Revenue Code of 1986, including an examination of—

(1) the types of gaming activities (including bingo, pull tabs, and casino nights) engaged in by charities and other nonprofit organizations and the frequency of such activities;

(2) the dollar volume of such gaming activities;

(3) the nature and extent of the involvement of for-profit entities and private parties in the management or operation of gaming activities of such organizations;

(4) competition between taxable gaming activities and gaming activities that are exempt from Federal income tax; and

(5) an analysis of the present law tax treatment of gaming activities of tax-exempt organizations.

The study may include any recommendations for change, including examination of the South End decision and the special exception for bingo games. The Secretary shall submit the results of the study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1996.

SEC. 13632. REPEAL OF TARGETED EXEMPTION FROM TAX ON UNRELATED TRADE OR BUSINESS INCOME FROM GAMBLING IN CERTAIN STATES.

(a) IN GENERAL.—Section 311 of the Tax Reform Act of 1984 is hereby repealed.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to games of chance conducted after December 31, 1995, in taxable years ending after such date.

SEC. 13633. EXTENSION OF WITHHOLDING TO CERTAIN GAMBLING WINNINGS.

(a) REPEAL OF EXEMPTION FOR BINGO AND KENO.—Paragraph (5) of section 3402(q) is amended to read as follows:

"(5) EXEMPTION FOR SLOT MACHINES.—The tax imposed under paragraph (1) shall not apply to winnings from a slot machine."

(b) THRESHOLD AMOUNT.—Paragraph (3) of section 3402(q) is amended—

(1) by striking "(B) and (C)" in subparagraph (A) and inserting "(B), (C), and (D)", and

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

"(D) BINGO AND KENO.—Proceeds of more than $5,000 from a wager placed in a bingo or keno game."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996.

PART VII—OTHER REFORMS

SEC. 13636. SUNSET OF LOW-INCOME HOUSING CREDIT.

(a) REPEAL OF REALLOCATION OF UNUSED CREDITS AMONG STATES.—Subparagraph (D) of section 42(h)(3) is amended by adding at the end the following new clause:

"(v) TERMINATION.—No amount may be allocated under this paragraph for any calendar year after 1995."

(b) TERMINATION.—Section 42 is amended by adding at the end the following new subsection:

"(o) TERMINATION.—

"(1) IN GENERAL.—Except as provided in paragraph (2)—

"(A) clause (i) of subsection (h)(3)(C) shall not apply to any amount allocated after December 31, 1997, and

"(B) subsection (h)(4) shall not apply to any building placed in service after such date.

"(2) EXCEPTION FOR BOND-FINANCED BUILDINGS IN PROGRESS.—For purposes of paragraph (1)(B), a building shall be treated as placed in service before January 1, 1998, if—

"(A) the bonds with respect to such building are issued before such date,

"(B) the taxpayer's basis in the project (of which the building is a part) as of December 31, 1997, is more than 10 percent of the taxpayer's reasonably expected basis in such project as of December 31, 1999, and

"(C) such building is placed in service before January 1, 2000."

SEC. 13637. REPEAL OF CREDIT FOR CONTRIBUTIONS TO COMMUNITY DEVELOPMENT CORPORATIONS.

(a) IN GENERAL.—Section 13311 of the Revenue Reconciliation Act of 1993 (relating to credit for contributions to certain community development corporations) is hereby repealed.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to contributions made after the date of the enactment of this Act (other than contributions made pursuant to a legally enforceable agreement which is effect on the date of the enactment of this Act).

SEC. 13638. REPEAL OF DIESEL FUEL TAX REBATE TO PURCHASERS OF DIESEL-POWERED AUTOMOBILES AND LIGHT TRUCKS.

(a) IN GENERAL.—Section 6427 is amended by striking subsection (g).

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 34(a) is amended to read as follows:

"(3) under section 6427 with respect to fuels used for nontaxable purposes or resold during the taxable year (determined without regard to section 6427(k))."

(2) Paragraphs (1) and (2)(A) of section 6427(i) are each amended—

(A) by striking "(g),", and

(B) by striking "(or a qualified diesel powered highway vehicle purchased)" each place it appears.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to vehicles purchased after December 31, 1995.

SEC. 13639. APPLICATION OF FAILURE-TO-PAY PENALTY TO SUBSTITUTE RETURNS.

(a) GENERAL RULE.—Section 6651 (relating to failure to file tax return or to pay tax) is amended by adding at the end the following new subsection:

"(g) TREATMENT OF RETURNS PREPARED BY SECRETARY UNDER SECTION 6020(b).—In the case of any return made by the Secretary under section 6020(b)—

"(1) such return shall be disregarded for purposes of determining the amount of the addition under paragraph (1) of subsection (a), but

"(2) such return shall be treated as the return filed by the taxpayer for purposes of determining the amount of the addition under paragraphs (2) and (3) of subsection (a)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply in the case of any return the due date for which (determined without regard to extensions) is after the date of the enactment of this Act.

SEC. 13640. REPEAL OF SPECIAL RULE FOR RENTAL USE OF VACATION HOMES, ETC., FOR LESS THAN 15 DAYS.

(a) IN GENERAL.—Section 280A (relating to disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.) is amended by striking subsection (g).

(b) NO BASIS REDUCTION UNLESS DEPRECIATION CLAIMED.—Section 1016 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) SPECIAL RULE WHERE RENTAL USE OF VACATION HOME, ETC., FOR LESS THAN 15 DAYS.—If a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year, the reduction under subsection (a)(2) by reason of such rental use in any taxable year beginning after December 31, 1995, shall not exceed the depreciation deduction allowed for such rental use."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 13641. ELECTION TO CEASE STATUS AS QUALIFIED SCHOLARSHIP FUNDING CORPORATION.

(a) IN GENERAL.—Subsection (d) of section 150 (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraph:

"(3) ELECTION TO CEASE STATUS AS QUALIFIED SCHOLARSHIP FUNDING CORPORATION.—

"(A) IN GENERAL.—Any qualified scholarship funding bond, and qualified student loan bond, outstanding on the date of the issuer's election under this paragraph (and any bond (or series of bonds) issued to refund such a bond) shall not fail to be a tax-exempt bond solely because the issuer ceases to be described in subparagraphs (A) and (B) of paragraph (2) if the issuer meets the requirements of subparagraphs (B) and (C) of this paragraph.

"(B) ASSETS AND LIABILITIES OF ISSUER TRANSFERRED TO TAXABLE SUBSIDIARY.—The requirements of this subparagraph are met by an issuer if—

"(i) all of the student loan notes of the issuer and other assets pledged to secure the repayment of qualified scholarship funding bond indebtedness of the issuer are transferred to another corporation within a reasonable period after the election is made under this paragraph;

"(ii) such transferee corporation assumes or otherwise provides for the payment of all of the qualified scholarship funding bond indebtedness of the issuer within a reasonable period after the election is made under this paragraph;

"(iii) to the extent permitted by law, such transferee corporation assumes all of the responsibilities, and succeeds to all of the rights, of the issuer under the issuer's agreements with the Secretary of Education in respect of student loans;

"(iv) immediately after such transfer, the issuer, together with any other issuer which has made an election under this paragraph in respect of such transferee, hold all of the senior stock in such transferee corporation; and

"(v) such transferee corporation is not exempt from tax under this chapter.

"(C) ISSUER TO OPERATE AS INDEPENDENT ORGANIZATION DESCRIBED IN SECTION 501(c)(3).—The requirements of this subparagraph are met by an issuer if, within a reasonable period after the transfer referred to in subparagraph (B)—

"(i) the issuer is described in section 501(c)(3) and exempt from tax under section 501(a);

"(ii) the issuer no longer is described in subparagraphs (A) and (B) of paragraph (2); and "(iii) at least 80 percent of the members of the board of directors of the issuer are independent members.

"(D) SENIOR STOCK.—For purposes of this paragraph, the term 'senior stock' means stock—

"(i) which participates pro rata and fully in the equity value of the corporation with all other common stock of the corporation but which has the right to payment of liquidation proceeds prior to payment of liquidation proceeds in respect of other common stock of the corporation;

"(ii) which has a fixed right upon liquidation and upon redemption to an amount equal to the greater of—

"(I) the fair market value of such stock on the date of liquidation or redemption (whichever is applicable); or

"(II) the fair market value of all assets transferred in exchange for such stock and reduced by the amount of all liabilities of the corporation which has made an election under this paragraph assumed by the transferee corporation in such transfer;

"(iii) the holder of which has the right to require the transferee corporation to redeem on a date that is not later than 10 years after the date on which an election under this paragraph was made and pursuant to such election such stock was issued; and

"(iv) in respect of which, during the time such stock is outstanding, there is not outstanding any equity interest in the corporation having any liquidation, redemption or dividend rights in the corporation which are superior to those of such stock.

"(E) INDEPENDENT MEMBER.—The term 'independent member' means a member of the board of directors of the issuer who (except for services as a member of such board) receives no compensation directly or indirectly—

"(i) for services performed in connection with such transferee corporation, or

"(ii) for services as a member of the board of directors or as an officer of such transferee corporation.

For purposes of clause (ii), the term 'officer' includes any individual having powers or responsibilities similar to those of officers.

"(F) COORDINATION WITH CERTAIN PRIVATE FOUNDATION TAXES.—For purposes of sections 4942 (relating to the excise tax on a failure to distribute income) and 4943 (relating to the excise tax on excess business holdings), the transferee corporation referred to in subparagraph (B) shall be treated as a functionally related business (within the meaning of section 4942(j)(4)) with respect to the issuer during the period commencing with the date on which an election is made under this paragraph and ending on the date that is the earlier of—

"(i) the last day of the last taxable year for which more than 50 percent of the gross income of such transferee corporation is derived from, or more than 50 percent of the assets (by value) of such transferee corporation consists of, student loan notes incurred under the Higher Education Act of 1965; or

"(ii) the last day of the taxable year of the issuer during which occurs the date which is 10 years after the date on which the election under this paragraph is made.

"(G) ELECTION.—An election under this paragraph may be revoked only with the consent of the Secretary."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 13642. CERTAIN AMOUNTS DERIVED FROM FOREIGN CORPORATIONS TREATED AS UNRELATED BUSINESS TAXABLE INCOME.

(a) GENERAL RULE.—Subsection (b) of section 512 (relating to modifications) is amended by adding at the end thereof the following new paragraph:

"(18) TREATMENT OF CERTAIN AMOUNTS DERIVED FROM FOREIGN CORPORATIONS.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), any amount included in gross income under section 951(a)(1)(A) shall be included as an item of gross income derived from an unrelated trade or business to the extent the amount so included is attributable to insurance income (as defined in section 953) which, if derived directly by the organization, would be treated as gross income from an unrelated trade or business. There shall be allowed all deductions directly connected with amounts included in gross income under the preceding sentence.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to income attributable to a policy of insurance or reinsurance with respect to which the person (directly or indirectly) insured is—

"(i) such organization,

"(ii) an affiliate of such organization which is exempt from tax under section 501(a), or

"(iii) a director, officer, or employee of such organization or affiliate but only if the insurance covers solely risks associated with the performance of services for the benefit of such organization or affiliate.

"(C) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations for the application of this paragraph in the case of income paid through 1 or more entities or between 2 or more chains of entities."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts included in gross income in any taxable year beginning after December 31, 1995.

PART VIII—EXCISE TAX ON AMOUNTS OF PRIVATE EXCESS BENEFITS

SEC. 13646. EXCISE TAXES FOR FAILURE BY CERTAIN CHARITABLE ORGANIZATIONS TO MEET CERTAIN QUALIFICATION REQUIREMENTS.

(a) IN GENERAL.—Chapter 42 (relating to private foundations and certain other tax-exempt organizations) is amended by redesignating subchapter D as subchapter E and by inserting after subchapter C the following new subchapter:

"Subchapter D—Failure By Certain Charitable Organizations To Meet Certain Qualification Requirements

"SEC. 4958. TAXES ON EXCESS BENEFIT TRANSACTIONS.

"(a) INITIAL TAXES.—

"(1) ON THE DISQUALIFIED PERSON.—There is hereby imposed on each excess benefit transaction a tax equal to 25 percent of the excess benefit. The tax imposed by this paragraph shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

"(2) ON THE MANAGEMENT.—In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any organization manager in the excess benefit transaction, knowing that it is such a transaction, a tax equal to 10 percent of the excess benefit, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who participated in the excess benefit transaction.

"(b) ADDITIONAL TAX ON THE DISQUALIFIED PERSON.—In any case in which an initial tax is imposed by subsection (a)(1) on an excess benefit transaction and the excess benefit involved in such transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the excess benefit involved. The tax imposed by this subsection shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

"(c) EXCESS BENEFIT TRANSACTION; EXCESS BENEFIT.—For purposes of this section—

"(1) EXCESS BENEFIT TRANSACTION.—

"(A) IN GENERAL.—The term 'excess benefit transaction' means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for the performance of services unless such organization clearly indicated its intent to so treat such benefit.

"(B) EXCESS BENEFIT.—The term 'excess benefit' means the excess referred to in subparagraph (A).

"(2) AUTHORITY TO INCLUDE CERTAIN OTHER PRIVATE INUREMENT.—To the extent provided in regulations prescribed by the Secretary, the term 'excess benefit transaction' includes any transaction in which the amount of any economic benefit provided to or for the use of a disqualified person is determined in whole or in part by the revenues of 1 or more activities of the organization but only if such transaction results in inurement not permitted under paragraph (3) or (4) of section 501(c), as the case may be. In the case of any such transaction, the excess benefit shall be the amount of the inurement not so permitted.

"(d) SPECIAL RULES.—For purposes of this section—

"(1) JOINT AND SEVERAL LIABILITY.—If more than 1 person is liable for any tax imposed by subsection (a) or subsection (b), all such persons shall be jointly and severally liable for such tax.

"(2) LIMIT FOR MANAGEMENT.—With respect to any 1 excess benefit transaction, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $10,000.

"(e) APPLICABLE TAX-EXEMPT ORGANIZATION.—For purposes of this subchapter, the term 'applicable tax-exempt organization' means any organization which (without regard to any excess benefit) would be described in paragraph (3) or (4) of section 501(c) and exempt from tax under section 501(a). Such term shall not include a private foundation (as defined in section 509(a)).

"(f) OTHER DEFINITIONS.—For purposes of this section—

"(1) DISQUALIFIED PERSON.—The term 'disqualified person' means, with respect to any transaction—

"(A) any person who was, at any time during the 5-year period ending on the date of such transaction—

"(i) an organization manager, or

"(ii) an individual (other than an organization manager) in a position to exercise substantial influence over the affairs of the organization,

"(B) a member of the family of an individual described in subparagraph (A), and

"(C) a 35-percent controlled entity.

"(2) ORGANIZATION MANAGER.—The term 'organization manager' means, with respect to any applicable tax-exempt organization, any officer, director, or trustee of such organization (or any individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization).

"(3) 35-PERCENT CONTROLLED ENTITY.—

"(A) IN GENERAL.—The term '35-percent controlled entity' means—

"(i) a corporation in which persons described in subparagraph (A) or (B) of paragraph (1) own more than 35 percent of the total combined voting power,

"(ii) a partnership in which such persons own more than 35 percent of the profits interest, and

"(iii) a trust or estate in which such persons own more than 35 percent of the beneficial interest.

"(B) CONSTRUCTIVE OWNERSHIP RULES.—Rules similar to the rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of this paragraph.

"(4) FAMILY MEMBERS.—The members of an individual's family shall be determined under section 4946(d); except that such members also shall include the brothers and sisters (whether by the whole or half blood) of the individual and their spouses.

"(5) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any excess benefit transaction, the period beginning with the date on which the transaction occurs and ending on the earliest of—

"(A) the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1), or

"(B) the date on which the tax imposed by subsection (a)(1) is assessed.

"(6) CORRECTION.—The terms 'correction' and 'correct' mean, with respect to any excess benefit transaction, undoing the excess benefit to the extent possible, and where fully undoing the excess benefit is not possible, such additional corrective action as is prescribed by the Secretary by regulations.

"(g) TREATMENT OF PREVIOUSLY EXEMPT ORGANIZATIONS.—

"(1) IN GENERAL.—For purposes of this section, the status of any organization as an applicable tax-exempt organization shall be terminated only if—

"(A)(i) such organization notifies the Secretary (at such time and in such manner as the Secretary may by regulations prescribe) of its intent to accomplish such termination, or

"(ii) there is a final determination by the Secretary that such status has terminated, and

"(B)(i) such organization pays the tax imposed by paragraph (2) (or any portion not abated pursuant to paragraph (3)), or

"(ii) the entire amount of such tax is abated pursuant to paragraph (3).

"(2) IMPOSITION OF TAX.—There is hereby imposed on each organization referred to in paragraph (1) a tax equal to the lesser of—

"(A) the amount which the organization substantiates by adequate records or other corroborating evidence as the aggregate tax benefit resulting from its exemption from tax under section 501(a), or

"(B) the value of the net assets of such organization.

"(3) ABATEMENT OF TAX.—The Secretary may abate the unpaid portion of the assessment of any tax imposed by paragraph (2), or any liability in respect thereof, if the applicable tax-exempt organization distributes all of its net assets to 1 or more organizations each of which has been in existence, and described in section 501(c)(3), for a continuous period of at least 60 calendar months. If the distributing organization is described in section 501(c)(4), the preceding sentence shall be applied by treating the reference to section 501(c)(3) as including a reference to section 501(c)(4).

"(4) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of subsections (d), (e), and (f) of section 507 shall apply for purposes of this subsection."

(b) APPLICATION OF PRIVATE INUREMENT RULE TO TAX-EXEMPT ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).—Paragraph (4) of section 501(c) is amended by inserting "(A)" after "(4)" and by adding at the end the following:

"(B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual."

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 4955 is amended—

(A) by striking "SECTION 4945" in the heading and inserting "SECTIONS 4945 and 4958", and

(B) by inserting before the period "or an excess benefit for purposes of section 4958".

(2) Subsections (a), (b), and (c) of section 4963 are each amended by inserting "4958," after "4955,".

(3) Subsection (e) of section 6213 is amended by inserting "4958 (relating to private excess benefit)," before "4971".

(4) Paragraphs (2) and (3) of section 7422(g) are each amended by inserting "4958," after "4955,".

(5) Subsection (b) of section 7454 is amended by inserting "or whether an organization manager (as defined in section 4958(f)(2)) has 'knowingly' participated in an excess benefit transaction (as defined in section 4958(c))," after "section 4912(b),".

(6) The table of subchapters for chapter 42 is amended by striking the last item and inserting the following:

"Subchapter D. Failure by certain charitable organizations to meet certain qualification requirements.
"Subchapter E. Abatement of first and second tier taxes in certain cases."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section (other than subsection (b)) shall apply to excess benefit transactions occurring on or after September 14, 1995.

(2) BINDING CONTRACTS FOR PERSONAL SERVICES.—The amendments referred to in paragraph (1) shall not apply to any transaction pursuant to any written contract for the performance of personal services which was binding on September 13, 1995, and at all times thereafter before such transaction occurred.

(3) APPLICATION OF PRIVATE INUREMENT RULE TO TAX-EXEMPT ORGANIZATIONS DESCRIBED IN SECTION 501(C)(4).—

(A) IN GENERAL.—The amendment made by subsection (b) shall apply to inurement occurring on or after September 14, 1995.

(B) BINDING CONTRACTS.—The amendment made by subsection (b) shall not apply to any inurement occurring before January 1, 1997, pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such inurement occurred.

SEC. 13647. REPORTING OF CERTAIN EXCISE TAXES AND OTHER INFORMATION.

(a) REPORTING BY ORGANIZATIONS DESCRIBED IN SECTION 501(c)(3).—Subsection (b) of section 6033 (relating to certain organizations described in section 501(c)(3)) is amended by striking ''and'' at the end of paragraph (9), by redesignating paragraph (10) as paragraph (14), and by inserting after paragraph (9) the following new paragraphs:

''(10) the respective amounts (if any) of the taxes paid by the organization during the taxable year under the following provisions:

''(A) section 4911 (relating to tax on excess expenditures to influence legislation),

''(B) section 4912 (relating to tax on disqualifying lobbying expenditures of certain organizations), and

''(C) section 4955 (relating to taxes on political expenditures of section 501(c)(3) organizations),

''(11) the respective amounts (if any) of the taxes paid by the organization or any disqualified person during the taxable year under section 4958 (relating to taxes on private excess benefit from certain charitable organizations),

''(12) such information as the Secretary may require with respect to any excess benefit transaction (as defined in section 4958),

''(13) the name of each disqualified person who receives an economic benefit from an applicable tax-exempt organization (as defined in section 4958(e)) and such other information as the Secretary may prescribe with respect to such benefit, and''.

(b) ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).—Section 6033 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f) CERTAIN ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).—Every organization described in section 501(c)(4) which is subject to the requirements of subsection (a) shall include on the return required under subsection (a) the information referred to in paragraphs (10), (11), (12) and (13) of subsection (b) with respect to such organization.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns for taxable years beginning after the date of the enactment of this Act.

SEC. 13648. EXEMPT ORGANIZATIONS REQUIRED TO PROVIDE COPY OF RETURN.

(a) GENERAL RULE.—

(1) Subparagraph (A) of section 6104(e)(1) (relating to public inspection of annual returns) is amended to read as follows:

''(A) IN GENERAL.—During the 3-year period beginning on the filing date—

''(i) a copy of the annual return filed under section 6033 (relating to returns by exempt organizations) by any organization to which this paragraph applies shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office, and

''(ii) upon request of an individual made at such principal office or such a regional or district office, a copy of such annual return shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

If the request under clause (ii) is made in person, such copy shall be provided immediately and, if made other than in person, shall be provided within 30 days.''

(2) Clause (ii) of section 6104(e)(2)(A) is amended by inserting before the period at the end thereof the following: ''(and, upon request of an individual made at such principal office or such a regional or district office, a copy of the material required to be available for inspection under this subparagraph shall be provided (in accordance with the last sentence of paragraph (1)(A)) to such individual without charge other than a reasonable fee for any reproduction and mailing costs)''.

(3) Subsection (e) of section 6104 is amended by adding at the end the following new paragraph:

"(3) LIMITATION.—Paragraph (1)(A)(ii) (and the corresponding provision of paragraph (2)) shall not apply to any request if the Secretary determines, upon application by an organization, that such request is part of a harassment campaign and that compliance with such request is not in the public interest."

(b) ADVERTISEMENTS ETC., REQUIRED TO DISCLOSE AVAILABILITY OF ANNUAL RETURN.—

(1) Paragraph (1) of section 6104(e) is amended by adding at the end thereof the following new subparagraph:

"(E) ADVERTISEMENTS ETC., REQUIRED TO DISCLOSE AVAILABILITY OF ANNUAL RETURN.—In the case of an organization required by subparagraph (A) to provide a copy of its annual return under section 6033 upon request to individuals, each written advertisement or solicitation by (or on behalf of) such organization shall contain an express statement (in a conspicuous and easily recognizable format) that such return shall be provided to individuals upon request."

(2) Section 6716, as added by section 13649 of this title, is amended—

(A) by striking "section 6116" each place it appears and inserting "section 6116 or section 6104(e)(1)(E)",

(B) by striking "$1,000" in subsection (a) and inserting "$1,000 ($100 in the case of a failure to meet the requirements of 6104(e)(1)(E))", and

(C) by inserting before the period at the end of the section heading "; failure of certain exempt organizations to disclose availability of annual return".

(3) Subparagraph (C) of section 6652(c)(1) is amended by striking "(e)(1)" and inserting "(e)(1) (other than subparagraph (E))", by striking "$10" and inserting "$20", and by striking "$5,000" and inserting "$10,000".

(4) Subparagraph (D) of section 6652(c)(1) is amended by striking "$10" and inserting "$20".

(5) The item relating to section 6716 in the table of sections for part I of subchapter B of chapter 68 is amended by inserting before the period "; failure of certain exempt organizations to disclose availability of annual return".

(c) INCREASE IN PENALTY FOR WILLFUL FAILURE TO ALLOW PUBLIC INSPECTION OF CERTAIN RETURNS, ETC.—Section 6685 is amended by striking "$1,000" and inserting "$5,000".

(d) COPIES OF RETURNS OF EXEMPT ORGANIZATIONS AVAILABLE FROM SECRETARY IN CERTAIN CASES.—Subsection (b) of section 6104 is amended to read as follows:

"(b) INSPECTION OF ANNUAL INFORMATION RETURNS.—

"(1) IN GENERAL.—The information required to be furnished by sections 6033, 6034, and 6058, together with the names and addresses of such organizations and trusts, shall be made available to the public at such times and in such places as the Secretary may prescribe. Nothing in this subsection shall authorize the Secretary to disclose the name or address of any contributor to any organization or trust (other than a private foundation, as defined in section 509(a)) which is required to furnish such information.

"(2) COPIES PROVIDED OF RETURNS FILED UNDER SECTION 6033 AND APPLICATIONS FILED UNDER SECTION 508 IN CERTAIN CASES.—The Secretary shall provide copies of returns filed under section 6033 and applications for exemption filed under section 508 by any organization to which subsection (d) or (e)(1) applies to any person who agrees (subject to such conditions as the Secretary shall prescribe)—

"(A) to accept broad categories of such returns and applications, and

"(B) to provide electronic access to the provided returns and applications on an electronic network available to the general public.

Such copies shall be provided without charge if such person agrees to provide such access without charge. Otherwise, the Secretary may impose a reasonable fee for any reproduction and mailing costs.

"(3) RETURNS AND APPLICATIONS FILED BEFORE 1996.—Paragraph (2) shall apply to returns and applications filed before January 1, 1996, only to the extent provided by the Secretary."

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996 (or, if later, the 90th day after the date of the enactment of this Act).

SEC. 13649. CERTAIN ORGANIZATIONS REQUIRED TO DISCLOSE NONEXEMPT STATUS.

(a) GENERAL RULE.—Subchapter B of chapter 61 (relating to miscellaneous provisions) is amended by redesignating section 6116 as section 6117 and by inserting after section 6115 the following new section:

"SEC. 6116. CERTAIN ORGANIZATIONS REQUIRED TO DISCLOSE NONEXEMPT STATUS.

"(a) IN GENERAL.—If—

"(1) in an advertisement or solicitation by (or on behalf of) an organization, such organization is referred to as being nonprofit, and

"(2) such organization is not exempt from tax under subtitle A,

such advertisement or solicitation shall contain an express statement (in a conspicuous and easily recognizable format) that such organization is not exempt from Federal income taxes.

"(b) CROSS REFERENCE.—

"For penalties for violation of subsection (a), see section 6716."

(b) PENALTY.—Part I of subchapter B of chapter 68 is amended by adding at the end thereof the following new section:

"SEC. 6716. FAILURE TO DISCLOSE NONEXEMPT STATUS.

"(a) IMPOSITION OF PENALTY.—If there is a failure to meet the requirements of section 6116 with respect to any advertisement or solicitation by (or on behalf of) an organization, such organization shall pay a penalty of $1,000 for each day on which such a failure occurred. The maximum penalty imposed under this subsection on failures by any organization during any calendar year shall not exceed $10,000.

"(b) REASONABLE CAUSE EXEMPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

"(c) $10,000 LIMITATION NOT TO APPLY WHERE INTENTIONAL DISREGARD.—If any failure to which subsection (a) applies is due to intentional disregard of the requirements of section 6116—

"(1) the penalty under subsection (a) for the day on which failure occurred shall be the greater of—

"(A) $1,000, or

"(B) 50 percent of the aggregate cost of the advertisements and solicitations which occurred on such day and with respect to which there was such failure,

"(2) the $10,000 limitation of subsection (a) shall not apply to any penalty under subsection (a) for the day on which such failure occurred, and

"(3) such penalty shall not be taken into account in applying such limitation to other penalties under subsection (a).

"(d) DAY ON WHICH FAILURE OCCURS.—For purposes of this section, rules similar to the rules of section 6710(d) shall apply in determining the day on which any failure occurs."

(c) CLERICAL AMENDMENTS.—

(1) The table of sections for subchapter B of chapter 61 is amended by striking the item relating to section 6116 and inserting the following:

(2) The table of sections of part I of subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996 (or, if later, the 90th day after the date of the enactment of this Act).

SEC. 13650. INCREASE IN PENALTIES ON EXEMPT ORGANIZATIONS FOR FAILURE TO FILE COMPLETE AND TIMELY ANNUAL RETURNS.

(a) IN GENERAL.—Subparagraph (A) of section 6652(c)(1) (relating to annual returns under section 6033) is amended by striking "$10" and inserting "$20" and by striking "$5,000" and inserting "$10,000".

(b) LARGER PENALTY ON ORGANIZATIONS HAVING GROSS RECEIPTS IN EXCESS OF $1,000,000.—Subparagraph (A) of section 6652(c)(1) is amended by adding at the end the following new sentence: "In the case of an organization having gross receipts exceeding $1,000,000 for any year, with respect to the return required under section 6033 for such year, the first sentence of this subparagraph shall be applied by substituting '$100' for '$20' and, in lieu of applying the second sentence of this subparagraph, the maximum penalty under this subparagraph shall not exceed $50,000."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns for taxable years ending on or after December 31, 1995.

SEC. 13651. STUDIES.

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of—

(1) whether the statutory prohibition on private inurement, and the provisions of section 4958 of the Internal Revenue Code of 1986 (as added by this part), should apply to other tax-exempt organizations,

(2) whether State officials responsible for overseeing charitable organizations should be provided with Federal tax information in addition to the information available under section 6103 of such Code for purposes of such oversight, and

(3) whether the return required to be filed by section 6033 of such Code should be modified to assure the return's utility to such Secretary and to the public and to reduce any unnecessary reporting burdens.

(b) REPORT.—Not later than January 1, 1997, the report of such study shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

Subtitle G—Reform of the Earned Income Tax Credit

SEC. 13701. REPEAL OF EARNED INCOME CREDIT FOR INDIVIDUALS WITHOUT QUALIFYING CHILDREN; MODIFICATIONS TO CREDIT PHASEOUT.

(a) REPEAL OF CREDIT FOR INDIVIDUALS WITHOUT CHILDREN.—Subparagraph (A) of section 32(c)(1) (defining eligible individual) is amended to read as follows:

"(A) IN GENERAL.—The term 'eligible individual' means any individual who has a qualifying child for the taxable year."

(b) MODIFICATIONS TO PHASEOUT.—

(1) Subsection (b) of section 32 is amended to read as follows:

"(b) PERCENTAGES.—

"(1) IN GENERAL.—The credit percentage and the phaseout percentage shall be determined as follows:

"In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	34	18
2 or more qualifying children	40	23

"(2) AMOUNTS.—The earned income amount and the phaseout amount shall be determined as follows:

"In the case of an eligible individual with:	The earned income amount is:	The phaseout amount is:
1 qualifying child	$6,340	$11,630
2 or more qualifying children	$8,910	$11,630."

(2) Subsection (j) of section 32 is amended—

(A) by striking "subsection (b)(2)(A)" and inserting "subsection (b)(2)",

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

(C) by striking "1993" and inserting "1995".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 13702. MODIFICATION OF ADJUSTED GROSS INCOME USED FOR PHASEOUT.

(a) IN GENERAL.—Subsections (a)(2)(B), (c)(1)(C), and (f)(2)(B) of section 32 are each amended by striking "adjusted gross income" each place it appears and inserting "modified adjusted gross income".

(b) MODIFIED ADJUSTED GROSS INCOME.—Subsection (c) of section 32 is amended by adding at the end the following new paragraph:

"(5) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this section, the term 'modified adjusted gross income' means adjusted gross income increased by—

"(A) any amount received as a pension or annuity, and any distribution or payment received from an individual retirement plan, by the taxpayer during the taxable year to the extent not otherwise included in gross income, and

"(B) the social security benefits (as defined in section 86(d)) received by the taxpayer during the taxable year to the extent not included in gross income.

Any amount which is not includible in gross income by reason of paragraph (3), (4), or (5) of section 408(d) or section 402(c), 403(a)(4), 403(b)(8), or 457(e)(10) shall be treated as not described in subparagraph (A)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 13703. EARNED INCOME TAX CREDIT DENIED TO INDIVIDUALS NOT AUTHORIZED TO BE EMPLOYED IN THE UNITED STATES.

(a) IN GENERAL.—Section 32(c)(1) (relating to individuals eligible to claim the earned income tax credit) is amended by adding at the end the following new subparagraph:

"(F) IDENTIFICATION NUMBER REQUIREMENT.—The term 'eligible individual' does not include any individual who does not include on the return of tax for the taxable year—

"(i) such individual's taxpayer identification number, and

"(ii) if the individual is married (within the meaning of section 7703), the taxpayer identification number of such individual's spouse."

(b) SPECIAL IDENTIFICATION NUMBER.—Section 32 is amended by adding at the end the following new subsection:

"(l) IDENTIFICATION NUMBERS.—Solely for purposes of subsections (c)(1)(F) and (c)(3)(D), a taxpayer identification number means a social security number issued to an individual by the Social Security Administration (other than a social security number issued pursuant to clause (II) (or that portion of clause (III) that relates to clause (II)) of section 205(c)(2)(B)(i) of the Social Security Act)."

(c) EXTENSION OF PROCEDURES APPLICABLE TO MATHEMATICAL OR CLERICAL ERRORS.—Section 6213(g)(2) (relating to the definition of mathematical or clerical errors) is amended by striking "and" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting a comma, and by inserting after subparagraph (E) the following new subparagraphs:

"(F) an omission of a correct taxpayer identification number required under section 32 (relating to the earned income tax credit) to be included on a return, and

"(G) an entry on a return claiming the credit under section 32 with respect to net earnings from self-employment described in section 32(c)(2)(A) to the extent the tax imposed by section 1401 (relating to self-employment tax) on such net earnings has not been paid."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

Subtitle H—Increase in Public Debt Limit

SEC. 13801. INCREASE IN PUBLIC DEBT LIMIT.

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar amount contained therein and inserting "$5,500,000,000,000".

Subtitle I—Coal Industry Retiree Health Equity

SEC. 13901. REPEAL OF REACHBACK PROVISIONS OF COAL INDUSTRY HEALTH BENEFIT SYSTEM.

(a) AMENDMENTS RELATED TO DEFINITIONS.—

(1) AGREEMENTS.—

(A) IN GENERAL.—Paragraph (1) of section 9701(b) (relating to agreements) is amended to read as follows:

"(1) COAL WAGE AGREEMENTS.—

"(A) 1988 AGREEMENT.—The term '1988 agreement' means the collective bargaining agreement between the settlors which became effective on February 1, 1988.

"(B) COAL WAGE AGREEMENT.—The term 'coal wage agreement' means any predecessor to the 1988 agreement."

(B) CONFORMING AMENDMENT.—Section 9701(b) is amended by striking paragraph (3).

(2) OPERATORS.—

(A) SIGNATORY OPERATOR.—Paragraph (1) of section 9701(c) (relating to operators) is amended to read as follows:

"(1) SIGNATORY OPERATOR.—The term 'signatory operator' means a 1988 agreement operator."

(B) 1988 AGREEMENT OPERATOR.—Paragraph (3) of section 9701(c) is amended to read as follows:

"(3) 1988 AGREEMENT OPERATOR.—The term '1988 agreement operator' means—

"(A) an operator which was a signatory to the 1988 agreement, or

"(B) a person in business which, during the term of the 1988 agreement, was a signatory to an agreement (other than the National Coal Mine Construction Agreement and the Coal Haulers' Agreement) containing pension and health care contribution and benefit provisions which are the same as those contained in the 1988 agreement.

Such term shall not include any operator who was assessed, and did pay the full amount of, contractual withdrawal liability to the 1950 UMWA Benefit Plan, the 1974 UMWA Benefit Plan, or the Combined Fund."

(C) LAST SIGNATORY OPERATOR.—Section 9701(c)(4) is amended by inserting "bituminous" before "coal" each place it appears.

(b) COMBINED BENEFIT FUND.—Section 9702(b)(1) is amended to read as follows:

"(b) BOARD OF TRUSTEES.—

"(1) IN GENERAL.—For purposes of subsection (a), the board of trustees for the Combined Fund shall be appointed as follows:

"(A) two individuals who represent employers in the coal mining industry shall be designated by the BCOA;

"(B) two individuals designated by the United Mine Workers of America; and

"(C) three persons selected by the persons appointed under subparagraphs (A) and (B)."

(c) ASSIGNMENT OF ELIGIBLE BENEFICIARIES.—Subsection (a) of section 9706 is amended by adding at the end the following new flush sentence:

"For purposes of assessing premiums on or after October 1, 1995, under this chapter, the Commissioner of Social Security shall, effective October 1, 1995, revoke all assignments previously made (and shall make no further assignments and shall terminate all unpaid liabilities for any pending assignments) to all persons other than signatory operators and shall deem each affected coal industry retiree who is an eligible beneficiary to be an unassigned beneficiary under section 9706. The preceding sentence shall not be construed to prevent any transfer, or any treatment of a successor as an assigned operator, under subsection (b)(2)."

(d) 1992 UMWA BENEFIT PLAN.—Section 9712(d) is amended—

(1) by striking paragraph (3) and by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively, and

(2) by striking "or last signatory operator described in paragraph (3)," in paragraph (3) (as redesignated under paragraph (1)).

(e) INFORMATION REQUIREMENTS.—

(1) IN GENERAL.—Subsection (h) of section 9704 is amended by adding at the end the following new paragraph:

"(2) INFORMATION TO CONTRIBUTORS.—

"(A) IN GENERAL.—The trustees of the Combined Fund shall, within 30 days of a written request, make available to any person required to make contributions to the Combined Fund, or their agent—

"(i) all documents which reflect its financial and operational status, including documents under which it is operated, and

"(ii) all documents prepared at the request of the trustees or staff of the Combined Fund which form the basis for any of its actions or reports, including the eligibility of participants in predecessor plans.

"(B) FEES.—The trustees may charge reasonable fees (not in excess of actual expenses) for providing documents under this paragraph."

(2) CONFORMING AMENDMENT.—Subsection (h) of section 9704 is amended by striking "(h) INFORMATION.—The" and inserting the following:

"(h) INFORMATION.—

"(1) INFORMATION TO SECRETARY.—The".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after September 30, 1995.

TITLE XIV—COMMITTEE ON WAYS AND MEANS—TAX SIMPLIFICATION

SEC. 14001. SHORT TITLE; AMENDMENT TO 1986 CODE.

(a) SHORT TITLE.—This title may be cited as the "Tax Simplification Act of 1995".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

Subtitle A—Provisions Relating to Individuals

PART I—PROVISIONS RELATING TO ROLLOVER OF GAIN ON SALE OF PRINCIPAL RESIDENCE

SEC. 14101. MULTIPLE SALES WITHIN ROLLOVER PERIOD.

(a) GENERAL RULE.—

(1) Section 1034 (relating to rollover of gain on sale of principal residence) is amended by striking subsection (d).

(2) Paragraph (4) of section 1034(c) is amended to read as follows:

"(4) If the taxpayer, during the period described in subsection (a), purchases more than 1 residence which is used by him as his principal residence at some time within 2 years after the date of the sale of the old residence, only the first of such residences so used by him after the date of such sale shall constitute the new residence."

(3) Subsections (h)(1) and (k) of section 1034 are each amended by striking "(other than the 2 years referred to in subsection (c)(4))".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to sales of old residences (within the meaning of section 1034 of the Internal Revenue Code of 1986) after the date of the enactment of this Act.

SEC. 14102. SPECIAL RULES IN CASE OF DIVORCE.

(a) IN GENERAL.—Subsection (c) of section 1034 is amended by adding at the end the following new paragraph:

"(5) If—

"(A) a residence is sold by an individual pursuant to a divorce or marital separation, and

"(B) the taxpayer used such residence as his principal residence at any time during the 2-year period ending on the date of such sale,

for purposes of this section, such residence shall be treated as the taxpayer's principal residence at the time of such sale."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales of old residences (within the meaning of section 1034 of the Internal Revenue Code of 1986) after the date of the enactment of this Act.

SEC. 14103. ONE-TIME EXCLUSION OF GAIN FROM SALE OF PRINCIPAL RESIDENCE FOR CERTAIN SPOUSES.

(a) IN GENERAL.—Paragraph (2) of section 121(b) (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) is amended by adding at the end the following new sentence: "For purposes of applying the preceding sentence to individuals who are married to each other, an election by one individual with respect to a sale or exchange occurring before the marriage shall be disregarded for purposes of permitting an election with respect to property owned and used by the other individual as his principal residence throughout the 3-year period ending on the date of the marriage."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of determining whether an election may be made under section 121 of the Internal Revenue Code of 1986 with respect to a sale or exchange occurring after September 13, 1995.

PART II—OTHER PROVISIONS

SEC. 14111. PAYMENT OF TAX BY COMMERCIALLY ACCEPTABLE MEANS.

(a) GENERAL RULE.—Section 6311 is amended to read as follows:

"SEC. 6311. PAYMENT OF TAX BY COMMERCIALLY ACCEPTABLE MEANS.

"(a) AUTHORITY TO RECEIVE.—It shall be lawful for the Secretary to receive for internal revenue taxes (or in payment for internal revenue stamps) any commercially acceptable means that the Secretary deems appropriate to the extent and under the conditions provided in regulations prescribed by the Secretary.

"(b) ULTIMATE LIABILITY.—If a check, money order, or other method of payment, including payment by credit card, debit card, or charge card so received is not duly paid, or is paid and subsequently charged back to the Secretary, the person by whom such check, or money order, or other method of payment has been tendered shall remain liable for the payment of the tax or for the stamps, and for all legal penalties and additions, to the same extent as if such check, money order, or other method of payment had not been tendered.

"(c) LIABILITY OF BANKS AND OTHERS.—If any certified, treasurer's, or cashier's check (or other guaranteed draft), or any money order, or any other means of payment that has been guaranteed by a financial institution (such as a credit card, debit card, or charge card transaction which has been guaranteed expressly by a financial institution) so received is not duly paid, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for—

"(1) the amount of such check (or draft) upon all assets of the financial institution on which drawn,

"(2) the amount of such money order upon all the assets of the issuer thereof, or

"(3) the guaranteed amount of any other transaction upon all the assets of the institution making such guarantee,

and such amount shall be paid out of such assets in preference to any other claims whatsoever against such financial institution, issuer, or guaranteeing institution, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such financial institution.

"(d) PAYMENT BY OTHER MEANS.—

"(1) AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary shall prescribe such regulations as the Secretary deems necessary to receive payment by commercially acceptable means, including regulations that—

"(A) specify which methods of payment by commercially acceptable means will be acceptable,

"(B) specify when payment by such means will be considered received,

"(C) identify types of nontax matters related to payment by such means that are to be resolved by persons ultimately liable for payment and financial intermediaries, without the involvement of the Secretary, and

"(D) ensure that tax matters will be resolved by the Secretary, without the involvement of financial intermediaries.

"(2) AUTHORITY TO ENTER INTO CONTRACTS.—Notwithstanding section 3718(f) of title 31, United States Code, the Secretary is authorized to enter into contracts to obtain services related to receiving payment by other means where cost beneficial to the Government. The Secretary may not pay any fee or provide any other consideration under such contracts.

"(3) SPECIAL PROVISIONS FOR USE OF CREDIT CARDS.—If use of credit cards is accepted as a method of payment of taxes pursuant to subsection (a)—

"(A) a payment of internal revenue taxes (or a payment for internal revenue stamps) by a person by use of a credit card shall not be subject to section 161 of the Truth-in-Lending Act (15 U.S.C. 1666), or to any similar provisions of State law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the credit card account such as a computational error or numerical transposition in the credit card transaction or an issue as to whether the person authorized payment by use of the credit card,

"(B) a payment of internal revenue taxes (or a payment for internal revenue stamps) shall not be subject to section 170 of the Truth-in-Lending Act (15 U.S.C. 1666i), or to any similar provisions of State law,

"(C) a payment of internal revenue taxes (or a payment for internal revenue stamps) by a person by use of a debit card shall not be subject to section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), or to any similar provisions of State law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the debit card account such as a computational error or numerical transposition in the debit card transaction or an issue as to whether the person authorized payment by use of the debit card,

"(D) the term 'creditor' under section 103(f) of the Truth-in-Lending Act (15 U.S.C. 1602(f)) shall not include the Secretary with respect to credit card transactions in payment of internal revenue taxes (or payment for internal revenue stamps), and

"(E) notwithstanding any other provision of law to the contrary, in the case of payment made by credit card or debit card transaction of an amount owed to a person as the result of the correction of an error under section 161 of the Truth-in-Lending Act (15 U.S.C. 1666) or section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), the Secretary is authorized to provide such amount to such person as a credit to that person's credit card or debit card account through the applicable credit card or debit card system.

"(e) CONFIDENTIALITY OF INFORMATION.—

"(1) IN GENERAL.—Except as otherwise authorized by this subsection, no person may use or disclose any information relating to credit or debit card transactions obtained pursuant to section 6103(k)(8) other than for purposes directly related to the processing of such transactions, or the billing or collection of amounts charged or debited pursuant thereto.

"(2) EXCEPTIONS.—

"(A) Debit or credit card issuers or others acting on behalf of such issuers may also use and disclose such information for purposes directly related to servicing an issuer's accounts.

"(B) Debit or credit card issuers or others directly involved in the processing of credit or debit card transactions or the billing or collection of amounts charged or debited thereto may also use and disclose such information for purposes directly related to—

"(i) statistical risk and profitability assessment;

"(ii) transferring receivables, accounts, or interest therein;

"(iii) auditing the account information;

"(iv) complying with Federal, State, or local law; and

"(v) properly authorized civil, criminal, or regulatory investigation by Federal, State, or local authorities.

"(3) PROCEDURES.—Use and disclosure of information under this paragraph shall be made only to the extent authorized by written procedures promulgated by the Secretary.

"(4) CROSS REFERENCE.—

"For provision providing for civil damages for violation of paragraph (1), see section 7431."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 64 is amended by striking the item relating to section 6311 and inserting the following:

"Sec. 6311. Payment of tax by commercially acceptable means."

(c) AMENDMENTS TO SECTIONS 6103 AND 7431 WITH RESPECT TO DISCLOSURE AUTHORIZATION.—

(1) Subsection (k) of section 6103 (relating to confidentiality and disclosure of returns and return information) is amended by adding at the end the following new paragraph:

"(8) DISCLOSURE OF INFORMATION TO ADMINISTER SECTION 6311.—The Secretary may disclose returns or return information to financial institutions and others to the extent the Secretary deems necessary for the administration of section 6311. Disclosures of information for purposes other than to accept payments by checks or money orders shall be made only to the extent authorized by written procedures promulgated by the Secretary."

(2) Section 7431 (relating to civil damages for unauthorized disclosure of returns and return information) is amended by adding at the end the following new subsection:

"(g) SPECIAL RULE FOR INFORMATION OBTAINED UNDER SECTION 6103(k)(8).—For purposes of this section, any reference to section 6103 shall be treated as including a reference to section 6311(e)."

(3) Section 6103(p)(3)(A) is amended by striking "or (6)" and inserting "(6), or (8)".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the day 9 months after the date of the enactment of this Act.

SEC. 14112. SIMPLIFIED FOREIGN TAX CREDIT LIMITATION FOR INDIVIDUALS.

(a) GENERAL RULE.—Section 904 (relating to limitations on foreign tax credit) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) SIMPLIFIED LIMITATION FOR CERTAIN INDIVIDUALS.—

"(1) IN GENERAL.—In the case of an individual to whom this subsection applies for any taxable year, the limitation of subsection (a) shall be the lesser of—

"(A) 25 percent of such individual's gross income for the taxable year from sources without the United States, or

"(B) the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year (determined without regard to subsection (c)).

No taxes paid or accrued by the individual during such taxable year may be deemed paid or accrued in any other taxable year under subsection (c).

"(2) INDIVIDUALS TO WHOM SUBSECTION APPLIES.—This subsection shall apply to an individual for any taxable year if—

"(A) the entire amount of such individual's gross income for the taxable year from sources without the United States consists of qualified passive income,

"(B) the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year does not exceed $200 ($400 in the case of a joint return), and

"(C) such individual elects to have this subsection apply for the taxable year.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) QUALIFIED PASSIVE INCOME.—The term 'qualified passive income' means any item of gross income if—

"(i) such item of income is passive income (as defined in subsection (d)(2)(A) without regard to clause (iii) thereof), and

"(ii) such item of income is shown on a payee statement furnished to the individual.

"(B) CREDITABLE FOREIGN TAXES.—The term 'creditable foreign taxes' means any taxes for which a credit is allowable under section 901; except that such term shall not include any tax unless such tax is shown on a payee statement furnished to such individual.

"(C) PAYEE STATEMENT.—The term 'payee statement' has the meaning given to such term by section 6724(d)(2).

"(D) ESTATES AND TRUSTS NOT ELIGIBLE.—This subsection shall not apply to any estate or trust."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995.

SEC. 14113. TREATMENT OF PERSONAL TRANSACTIONS BY INDIVIDUALS UNDER FOREIGN CURRENCY RULES.

(a) GENERAL RULE.—Subsection (e) of section 988 (relating to application to individuals) is amended to read as follows:

"(e) APPLICATION TO INDIVIDUALS.—

"(1) IN GENERAL.—The preceding provisions of this section shall not apply to any section 988 transaction entered into by an individual which is a personal transaction.

"(2) EXCLUSION FOR CERTAIN PERSONAL TRANSACTIONS.—If—

"(A) nonfunctional currency is disposed of by an individual in any transaction, and

"(B) such transaction is a personal transaction,

no gain shall be recognized for purposes of this subtitle by reason of changes in exchange rates after such currency was acquired by such individual and before such disposition. The preceding sentence shall not apply if the gain which would otherwise be recognized exceeds $200.

"(3) PERSONAL TRANSACTIONS.—For purposes of this subsection, the term 'personal transaction' means any transaction entered into by an individual, except that such term shall not include any transaction to the extent that expenses properly allocable to such transaction meet the requirements of section 162 or 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes)."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 14114. TREATMENT OF CERTAIN REIMBURSED EXPENSES OF RURAL MAIL CARRIERS.

(a) IN GENERAL.—Section 162 (relating to trade or business expenses) is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) TREATMENT OF CERTAIN REIMBURSED EXPENSES OF RURAL MAIL CARRIERS.—

"(1) GENERAL RULE.—In the case of any employee of the United States Postal Service who performs services involving the collection and delivery of mail on a rural route and who receives qualified reimbursements for the expenses incurred by such employee for the use of a vehicle in performing such services—

"(A) the amount allowable as a deduction under this chapter for the use of a vehicle in performing such services shall be equal to the amount of such qualified reimbursements; and

"(B) such qualified reimbursements shall be treated as paid under a reimbursement or other expense allowance arrangement for purposes of section 62(a)(2)(A) (and section 62(c) shall not apply to such qualified reimbursements).

"(2) DEFINITION OF QUALIFIED REIMBURSEMENTS.—For purposes of this subsection, the term 'qualified reimbursements' means the amounts paid by the United States Postal Service to employees as an equipment maintenance allowance under the 1991 collective bargaining agreement between the United States Postal Service and the National Rural Letter Carriers' Association. Amounts paid as an equipment maintenance allowance by such Postal Service under later collective bargaining agreements that supersede the 1991 agreement shall be considered qualified reimbursements if such amounts do not exceed the amounts that would have been paid under the 1991 agreement, adjusted for changes in the Consumer Price Index (as defined in section 1(f)(5)) since 1991."

(b) TECHNICAL AMENDMENT.—Section 6008 of the Technical and Miscellaneous Revenue Act of 1988 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 14115. EXCLUSION OF COMBAT PAY FROM WITHHOLDING LIMITED TO AMOUNT EXCLUDABLE FROM GROSS INCOME.

(a) IN GENERAL.—Paragraph (1) of section 3401(a) (defining wages) is amended by inserting before the semicolon the following: "to the extent remuneration for such service is excludable from gross income under such section".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to remuneration paid after December 31, 1995.

SEC. 14116. TREATMENT OF TRAVELING EXPENSES OF CERTAIN FEDERAL EMPLOYEES ENGAGED IN CRIMINAL INVESTIGATIONS.

(a) IN GENERAL.—Subsection (a) of section 162 is amended by adding at the end the following new sentence: "The preceding sentence shall not apply to any Federal employee during any period for which such employee is certified by the Attorney General (or the designee thereof) as traveling on behalf of the United States in temporary duty status to investigate, or provide support services for the investigation of, a Federal crime."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act.

Subtitle B—Pension Simplification

PART I—SIMPLIFIED DISTRIBUTION RULES

SEC. 14201. REPEAL OF 5-YEAR INCOME AVERAGING FOR LUMP-SUM DISTRIBUTIONS.

(a) IN GENERAL.—Subsection (d) of section 402 (relating to taxability of beneficiary of employees' trust) is amended by adding at the end the following new paragraph:

"(8) TERMINATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), this subsection shall not apply to any taxable year beginning after December 31, 1995.

"(B) RETENTION OF CERTAIN TRANSITION RULES.—Subparagraph (A) shall not apply to any distribution for which the taxpayer elects the benefits of section 1122 (h)(3) or (h)(5) of the Tax Reform Act of 1986."

SEC. 14202. REPEAL OF $5,000 EXCLUSION OF EMPLOYEES' DEATH BENEFITS.

(a) IN GENERAL.—Subsection (b) of section 101 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 101 is amended by striking "subsection (a) or (b)" and inserting "subsection (a)".

(2) Sections 406(e) and 407(e) are each amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(3) Section 7701(a)(20) is amended by striking ", for the purposes of applying the provisions of section 101(b) with respect to employees' death benefits".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 14203. SIMPLIFIED METHOD FOR TAXING ANNUITY DISTRIBUTIONS UNDER CERTAIN EMPLOYER PLANS.

(a) GENERAL RULE.—Subsection (d) of section 72 (relating to annuities; certain proceeds of endowment and life insurance contracts) is amended to read as follows:

"(d) SPECIAL RULES FOR QUALIFIED EMPLOYER RETIREMENT PLANS.—

"(1) SIMPLIFIED METHOD OF TAXING ANNUITY PAYMENTS.—

"(A) IN GENERAL.—In the case of any amount received as an annuity under a qualified employer retirement plan—

"(i) subsection (b) shall not apply, and

"(ii) the investment in the contract shall be recovered as provided in this paragraph.

"(B) METHOD OF RECOVERING INVESTMENT IN CONTRACT.—

"(i) IN GENERAL.—Gross income shall not include so much of any monthly annuity payment under a qualified employer retirement plan as does not exceed the amount obtained by dividing—

"(I) the investment in the contract (as of the annuity starting date), by

"(II) the number of anticipated payments determined under the table contained in clause (iii) (or, in the case of a contract to which subsection (c)(3)(B) applies, the number of monthly annuity payments under such contract).

"(ii) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2) and (3) of subsection (b) shall apply for purposes of this paragraph.

"(iii) NUMBER OF ANTICIPATED PAYMENTS.—

"If the age of the primary annuitant on the annuity starting date is:	**The number of anticipated payments is:**
Not more than 55	300
More than 55 but not more than 60	260
More than 60 but not more than 65	240
More than 65 but not more than 70	170
More than 70	120

"(C) ADJUSTMENT FOR REFUND FEATURE NOT APPLICABLE.—For purposes of this paragraph, investment in the contract shall be determined under subsection (c)(1) without regard to subsection (c)(2).

"(D) SPECIAL RULE WHERE LUMP SUM PAID IN CONNECTION WITH COMMENCEMENT OF ANNUITY PAYMENTS.—If, in connection with the commencement of annuity payments under any qualified employer retirement plan, the taxpayer receives a lump sum payment—

"(i) such payment shall be taxable under subsection (e) as if received before the annuity starting date, and

"(ii) the investment in the contract for purposes of this paragraph shall be determined as if such payment had been so received.

"(E) EXCEPTION.—This paragraph shall not apply in any case where the primary annuitant has attained age 75 on the annuity starting date unless there are fewer than 5 years of guaranteed payments under the annuity.

"(F) ADJUSTMENT WHERE ANNUITY PAYMENTS NOT ON MONTHLY BASIS.—In any case where the annuity payments are not made on a monthly basis, appropriate adjustments in the application of this paragraph shall be made to take into account the period on the basis of which such payments are made.

"(G) QUALIFIED EMPLOYER RETIREMENT PLAN.—For purposes of this paragraph, the term 'qualified employer retirement plan' means any plan or contract described in paragraph (1), (2), or (3) of section 4974(c).

"(2) TREATMENT OF EMPLOYEE CONTRIBUTIONS UNDER DEFINED CONTRIBUTION PLANS.—For purposes of this section, employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply in cases where the annuity starting date is after December 31, 1995.

SEC. 14204. REQUIRED DISTRIBUTIONS.

(a) IN GENERAL.—Section 401(a)(9)(C) (defining required beginning date) is amended to read as follows:

"(C) REQUIRED BEGINNING DATE.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'required beginning date' means April 1 of the calendar year following the later of—

"(I) the calendar year in which the employee attains age 70½, or

"(II) the calendar year in which the employee retires.

"(ii) EXCEPTION.—Subclause (II) of clause (i) shall not apply—

"(I) except as provided in section 409(d), in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 70½, or

"(II) for purposes of section 408 (a)(6) or (b)(3).

"(iii) ACTUARIAL ADJUSTMENT.—In the case of an employee to whom clause (i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 70½, the employee's accrued benefit shall be actuarially increased to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan.

"(iv) EXCEPTION FOR GOVERNMENTAL AND CHURCH PLANS.—Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause, the term 'church plan' means a plan maintained by a church for church employees, and the term 'church' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B))."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1995.

PART II—INCREASED ACCESS TO PENSION PLANS

SEC. 14211. MODIFICATIONS OF SIMPLIFIED EMPLOYEE PENSIONS.

(a) INCREASE IN NUMBER OF ALLOWABLE PARTICIPANTS FOR SALARY REDUCTION ARRANGEMENTS.—Section 408(k)(6)(B) is amended by striking "25" each place it appears in the text and heading thereof and inserting "100".

(b) REPEAL OF PARTICIPATION REQUIREMENT.—

(1) IN GENERAL.—Section 408(k)(6)(A) is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(2) CONFORMING AMENDMENTS.—Clause (ii) of section 408(k)(6)(C) and clause (ii) of section 408(k)(6)(F) are each amended by striking "subparagraph (A)(iii)" and inserting "subparagraph (A)(ii)".

(c) ALTERNATIVE TEST.—Clause (ii) of section 408(k)(6)(A), as redesignated by subsection (b)(1), is amended by adding at the end the following new flush sentence:

"The requirements of the preceding sentence are met if the employer makes contributions to the simplified employee pension meeting the requirements of sections 401(k)(11) (B) or (C), 401(k)(11)(D), and 401(m)(10)(B)."

(d) YEAR FOR COMPUTING NONHIGHLY COMPENSATED EMPLOYEE PERCENTAGE.—Clause (ii) of section 408(k)(6)(A), as redesignated by subsection (b)(1), is amended—

(1) by striking "such year" in subclause (I) and inserting "the preceding year", and

(2) by adding at the end the following new flush sentence:

"In the case of the first plan year for which an employer makes contributions to a simplified employee pension, rules similar to the rules of section 401(k)(3)(E) shall apply."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

SEC. 14212. STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS ELIGIBLE UNDER SECTION 401(k).

(a) IN GENERAL.—Subparagraph (B) of section 401(k)(4) is amended to read as follows:

"(B) ELIGIBILITY OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.—Any—

"(i) State or local government or political subdivision thereof, or any agency or instrumentality thereof, and

"(ii) any organization exempt from tax under this subtitle,

may include a qualified cash or deferred arrangement as part of a plan maintained by it unless the entity maintains an eligible deferred compensation plan (as defined in section 457(b)). This subparagraph shall not apply to a rural cooperative plan."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan years beginning after December 31, 1996, but shall not apply to any cash or deferred arrangement to which clause (i) or (ii) of section 1116(f)(2)(B) of the Tax Reform Act of 1986 applies.

PART III—NONDISCRIMINATION PROVISIONS

SEC. 14221. DEFINITION OF HIGHLY COMPENSATED EMPLOYEES.

(a) IN GENERAL.—Paragraph (1) of section 414(q) (defining highly compensated employee) is amended to read as follows:

"(1) IN GENERAL.—The term 'highly compensated employee' means any employee who—

"(A) was a 5-percent owner at any time during the year or the preceding year, or

"(B) had compensation for the preceding year from the employer in excess of $80,000.

The Secretary shall adjust the $80,000 amount under subparagraph (B) at the same time and in the same manner as under section 415(d), except that the base period in applying such section for purposes of this paragraph shall be the calendar quarter ending September 30, 1995."

(b) CONFORMING AMENDMENTS.—

(1)(A) Subsection (q) of section 414 is amended by striking paragraphs (2), (4), (5), (8), and (12) and by redesignating paragraphs (3), (6), (7), (9), (10), and (11) as paragraphs (2) through (7), respectively.

(B) Section 129(d)(8)(B), 401(a)(5)(D)(ii), 408(k)(2)(C), and 416(i)(1)(D) are each amended by striking "section 414(q)(7)" and inserting "section 414(q)(4)".

(C) Sections 401(a)(17) and 404(l) are each amended by striking "section 414(q)(6)" and inserting "section 414(q)(3)".

(D) Section 416(i)(1)(A) is amended by striking "section 414(q)(8)" and inserting "section 414(r)(9)".

(2)(A) Section 414(r) is amended by adding at the end the following new paragraph:

"(9) EXCLUDED EMPLOYEES.—For purposes of paragraph (2)(A), the following employees shall be excluded:

"(A) Employees who have not completed 6 months of service.

"(B) Employees who normally work less than 17½ hours per week.

"(C) Employees who normally work not more than 6 months during any year.

"(D) Employees who have not attained the age of 21.

"(E) Except to the extent provided in regulations, employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the employer.

Except as provided by the Secretary, the employer may elect to apply subparagraph (A), (B), (C), or (D) by substituting a shorter period of service, smaller number of hours or months, or lower age for the period of service, number of hours or months, or age (as the case may be) specified in such subparagraph."

(B) Subparagraph (A) of section 414(r)(2) is amended by striking "subsection (q)(8)" and inserting "paragraph (9)".

(3) Section 1114(c)(4) of the Tax Reform Act of 1986 is amended by adding at the end the following new sentence: "Any reference in this paragraph to section 414(q) shall be treated as a reference to such section as in effect before the Tax Simplification Act of 1995".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

SEC. 14222. REPEAL OF FAMILY AGGREGATION RULES.

(a) IN GENERAL.—Paragraph (6) of section 414(q) is hereby repealed.

(b) COMPENSATION LIMIT.—Subparagraph (A) of section 401(a)(17) is amended by striking the last sentence.

(c) DEDUCTION.—Subsection (l) of section 404 is amended by striking the last sentence.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

SEC. 14223. MODIFICATION OF ADDITIONAL PARTICIPATION REQUIREMENTS.

(a) GENERAL RULE.—Section 401(a)(26)(A) (relating to additional participation requirements) is amended to read as follows:

"(A) IN GENERAL.—In the case of a trust which is a part of a defined benefit plan, such trust shall not constitute a qualified trust under this subsection unless on each day of the plan year such trust benefits at least the lesser of—

"(i) 50 employees of the employer, or

"(ii) the greater of—

"(I) 40 percent of all employees of the employer, or

"(II) 2 employees (or if there is only 1 employee, such employee)."

(b) SEPARATE LINE OF BUSINESS TEST.—Section 401(a)(26)(G) (relating to separate line of business) is amended by striking "paragraph (7)" and inserting "paragraph (2)(A) or (7)".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1995.

SEC. 14224. NONDISCRIMINATION RULES FOR QUALIFIED CASH OR DEFERRED ARRANGEMENTS AND MATCHING CONTRIBUTIONS.

(a) ALTERNATIVE METHODS OF SATISFYING SECTION 401(k) NONDISCRIMINATION TESTS.—Section 401(k) (relating to cash or deferred arrangements) is amended by adding at the end the following new paragraph:

"(11) ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS.—

"(A) IN GENERAL.—A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement—

"(i) meets the contribution requirements of subparagraph (B) or (C), and

"(ii) meets the notice requirements of subparagraph (D).

"(B) MATCHING CONTRIBUTIONS.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to—

"(I) 100 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 3 percent of the employee's compensation, and

"(II) 50 percent of the elective contributions of the employee to the extent that such elective contributions exceed 3 percent but do not exceed 5 percent of the employee's compensation.

"(ii) RATE FOR HIGHLY COMPENSATED EMPLOYEES.—The requirements of this subparagraph are not met if, under the arrangement, the matching contribution with respect to any elective contribution of a highly compensated employee at any level of compensation is greater than that with respect to an employee who is not a highly compensated employee.

"(iii) ALTERNATIVE PLAN DESIGNS.—If the matching contribution with respect to any elective contribution at any specific level of compensation is not equal to the percentage required under clause (i), an arrangement shall not be treated as failing to meet the requirements of clause (i) if—

"(I) the level of an employer's matching contribution does not increase as an employee's elective contributions increase, and

"(II) the aggregate amount of matching contributions with respect to elective contributions not in excess of such level of compensation is at least equal to the amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (i).

"(C) NONELECTIVE CONTRIBUTIONS.—The requirements of this subparagraph are met if, under the arrangement, the employer is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

"(D) NOTICE REQUIREMENT.—An arrangement meets the requirements of this paragraph if, under the arrangement, each employee eligible to participate is, within a reasonable period before any year, given written notice of the employee's rights and obligations under the arrangement which—

"(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

"(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

"(E) OTHER REQUIREMENTS.—

"(i) WITHDRAWAL AND VESTING RESTRICTIONS.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to all employer contributions (including matching contributions).

"(ii) SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless such requirements are met without regard to subsection (l), and, for purposes of subsection (l), employer contributions under subparagraph (B) or (C) shall not be taken into account.

"(F) OTHER PLANS.—An arrangement shall be treated as meeting the requirements under subparagraph (A)(i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement."

(b) ALTERNATIVE METHODS OF SATISFYING SECTION 401(m) NONDISCRIMINATION TESTS.—Section 401(m) (relating to nondiscrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (10) as paragraph (11) and by adding after paragraph (9) the following new paragraph:

"(10) ALTERNATIVE METHOD OF SATISFYING TESTS.—

"(A) IN GENERAL.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

"(i) meets the contribution requirements of subparagraph (B) or (C) of subsection (k)(11),

"(ii) meets the notice requirements of subsection (k)(11)(D), and

"(iii) meets the requirements of subparagraph (B).

"(B) LIMITATION ON MATCHING CONTRIBUTIONS.—The requirements of this subparagraph are met if—

"(i) matching contributions on behalf of any employee may not be made with respect to an employee's contributions or elective deferrals in excess of 6 percent of the employee's compensation,

"(ii) the level of an employer's matching contribution does not increase as an employee's contributions or elective deferrals increase, and

"(iii) the matching contribution with respect to any highly compensated employee at a specific level of compensation is not greater than that with respect to an employee who is not a highly compensated employee."

(c) YEAR FOR COMPUTING NONHIGHLY COMPENSATED EMPLOYEE PERCENTAGE.—

(1) CASH OR DEFERRED ARRANGEMENTS.—Clause (ii) of section 401(k)(3)(A) is amended—

(A) by striking "such year" and inserting "the plan year", and

(B) by striking "for such plan year" and inserting "the preceding plan year".

(2) MATCHING AND EMPLOYEE CONTRIBUTIONS.—Section 401(m)(2)(A) is amended—

(A) by inserting "for such plan year" after "highly compensated employees", and

(B) by inserting "for the preceding plan year" after "eligible employees" each place it appears in clause (i) and clause (ii).

(d) SPECIAL RULE FOR DETERMINING AVERAGE DEFERRAL PERCENTAGE FOR FIRST PLAN YEAR, ETC.—

(1) Paragraph (3) of section 401(k) is amended by adding at the end the following new subparagraph:

"(E) For purposes of this paragraph, in the case of the first plan year of any plan, the amount taken into account as the actual deferral percentage of nonhighly compensated employees for the preceding plan year shall be—

"(i) 3 percent, or

"(ii) if the employer makes an election under this subclause, the actual deferral percentage of nonhighly compensated employees determined for such first plan year."

(2) Paragraph (3) of section 401(m) is amended by adding at the end the following: "Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection."

(e) DISTRIBUTION OF EXCESS CONTRIBUTIONS.—

(1) Subparagraph (C) of section 401(k)(8) (relating to arrangement not disqualified if excess contributions distributed) is amended by striking "on the basis of the respective portions of the excess contributions attributable to each of such employees" and inserting "on the basis of the amount of contributions by, or on behalf of, each of such employees".

(2) Subparagraph (C) of section 401(m)(6) (relating to method of distributing excess aggregate contributions) is amended by striking "on the basis of the respective portions of such amounts attributable to each of such employees" and inserting "on the basis of the amount of contributions on behalf of, or by, each such employee".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

PART IV—MISCELLANEOUS SIMPLIFICATION

SEC. 14231. TREATMENT OF LEASED EMPLOYEES.

(a) GENERAL RULE.—Subparagraph (C) of section 414(n)(2) (defining leased employee) is amended to read as follows:

"(C) such services are performed under significant direction or control by the recipient."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1995, but shall not apply to any relationship determined under an Internal Revenue Service ruling issued before the date of the enactment of this Act pursuant to section 414(n)(2)(C) of the Internal Revenue Code of 1986 (as in effect on the day before such date) not to involve a leased employee.

SEC. 14232. PLANS COVERING SELF-EMPLOYED INDIVIDUALS.

(a) AGGREGATION RULES.—Section 401(d) (relating to additional requirements for qualification of trusts and plans benefiting owner-employees) is amended to read as follows:

"(d) CONTRIBUTION LIMIT ON OWNER-EMPLOYEES.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the plan provides that contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

SEC. 14233. ELIMINATION OF SPECIAL VESTING RULE FOR MULTIEMPLOYER PLANS.

(a) IN GENERAL.—Paragraph (2) of section 411(a) (relating to minimum vesting standards) is amended—

(1) by striking "subparagraph (A), (B), or (C)" and inserting "subparagraph (A) or (B)"; and

(2) by striking subparagraph (C).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning on or after the earlier of—

(1) the later of—

(A) January 1, 1996, or

(B) the date on which the last of the collective bargaining agreements pursuant to which the plan is maintained terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(2) January 1, 1998.

Such amendments shall not apply to any individual who does not have more than 1 hour of service under the plan on or after the 1st day of the 1st plan year to which such amendments apply.

SEC. 14234. DISTRIBUTIONS UNDER RURAL COOPERATIVE PLANS.

(a) DISTRIBUTIONS AFTER CERTAIN AGE.—Section 401(k)(7) is amended by adding at the end the following new subparagraph:

"(C) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS.—A rural cooperative plan which includes a qualified cash or deferred arrangement shall not be treated as violating the requirements of section 401(a) merely by reason of a distribution to a participant after attainment of age 59½."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after December 31, 1995.

SEC. 14235. TREATMENT OF GOVERNMENTAL PLANS UNDER SECTION 415.

(a) DEFINITION OF COMPENSATION.—Subsection (k) of section 415 (regarding limitations on benefits and contributions under qualified plans) is amended by adding immediately after paragraph (2) the following new paragraph:

"(3) DEFINITION OF COMPENSATION FOR GOVERNMENTAL PLANS.—For purposes of this section, in the case of a governmental plan (as defined in section 414(d)), the term 'compensation' includes, in addition to the amounts described in subsection (c)(3)—

"(A) any elective deferral (as defined in section 402(g)(3)), and

"(B) any amount which is contributed by the employer at the election of the employee and which is not includible in the gross income of an employee under section 125 or 457."

(b) COMPENSATION LIMIT.—Subsection (b) of section 415 is amended by adding immediately after paragraph (10) the following new paragraph:

"(11) SPECIAL LIMITATION RULE FOR GOVERNMENTAL PLANS.—In the case of a governmental plan (as defined in section 414(d)), subparagraph (B) of paragraph (1) shall not apply."

(c) TREATMENT OF CERTAIN EXCESS BENEFIT PLANS.—

(1) IN GENERAL.—Section 415 is amended by adding at the end the following new subsection:

"(m) TREATMENT OF QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENTS.—

"(1) GOVERNMENTAL PLAN NOT AFFECTED.—In determining whether a governmental plan (as defined in section 414(d)) meets the requirements of this section, benefits provided under a qualified governmental excess benefit arrangement shall not be taken into account. Income accruing to a governmental plan (or to a trust that is maintained solely for the purpose of providing benefits under a qualified governmental excess benefit arrangement) in respect of a qualified governmental excess benefit arrangement shall constitute income derived from the exercise of an essential governmental function upon which such governmental plan (or trust) shall be exempt from tax under section 115.

"(2) TAXATION OF PARTICIPANT.—For purposes of this chapter—

"(A) the taxable year or years for which amounts in respect of a qualified governmental excess benefit arrangement are includible in gross income by a participant, and

"(B) the treatment of such amounts when so includible by the participant,

shall be determined as if such qualified governmental excess benefit arrangement were treated as a plan for the deferral of compensation which is maintained by a corporation not exempt from tax under this chapter and which does not meet the requirements for qualification under section 401.

"(3) QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENT.—For purposes of this subsection, the term 'qualified governmental excess benefit arrangement' means a portion of a governmental plan if—

"(A) such portion is maintained solely for the purpose of providing to participants in the plan that part of the participant's annual benefit otherwise payable under the terms of the plan that exceeds the limitations on benefits imposed by this section,

"(B) under such portion no election is provided at any time to the participant (directly or indirectly) to defer compensation, and

"(C) benefits described in subparagraph (A) are not paid from a trust forming a part of such governmental plan unless such trust is maintained solely for the purpose of providing such benefits."

(2) COORDINATION WITH SECTION 457.—Subsection (e) of section 457 is amended by adding at the end the following new paragraph:

"(15) TREATMENT OF QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENTS.—Subsections (b)(2) and (c)(1) shall not apply to any qualified governmental excess benefit arrangement (as defined in section 415(m)(3)), and benefits provided under such an arrangement shall not be taken into account in determining whether any other plan is an eligible deferred compensation plan.''

(3) CONFORMING AMENDMENT.—Paragraph (2) of section 457(f) is amended by striking ''and'' at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting '', and'', and by inserting immediately thereafter the following new subparagraph:

''(E) a qualified governmental excess benefit arrangement described in section 415(m).''

(d) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS.—Paragraph (2) of section 415(b) is amended by adding at the end the following new subparagraph:

''(I) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS PROVIDED UNDER GOVERNMENTAL PLANS.—Subparagraph (B) of paragraph (1), subparagraph (C) of this paragraph, and paragraph (5) shall not apply to—

''(i) income received from a governmental plan (as defined in section 414(d)) as a pension, annuity, or similar allowance as the result of the recipient becoming disabled by reason of personal injuries or sickness, or

''(ii) amounts received from a governmental plan by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee.''

(e) REVOCATION OF GRANDFATHER ELECTION.—

(1) IN GENERAL.—Subparagraph (C) of section 415(b)(10) is amended by adding at the end the following new clause:

''(ii) REVOCATION OF ELECTION.—An election under clause (i) may be revoked not later than the last day of the third plan year beginning after the date of the enactment of this clause. The revocation shall apply to all plan years to which the election applied and to all subsequent plan years. Any amount paid by a plan in a taxable year ending after the revocation shall be includible in income in such taxable year under the rules of this chapter in effect for such taxable year, except that, for purposes of applying the limitations imposed by this section, any portion of such amount which is attributable to any taxable year during which the election was in effect shall be treated as received in such taxable year.''

(2) CONFORMING AMENDMENT.—Subparagraph (C) of section 415(b)(10) is amended by striking ''This'' and inserting:

''(i) IN GENERAL.—This''.

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), (c), and (d) shall apply to taxable years beginning on or after the date of the enactment of this Act. The amendment made by subsection (e) shall apply with respect to election revocations adopted after the date of the enactment of this Act.

(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), such plan shall be treated as satisfying the requirements of section 415 of such Code for all taxable years beginning before the date of the enactment of this Act.

SEC. 14236. UNIFORM RETIREMENT AGE.

(a) DISCRIMINATION TESTING.—Paragraph (5) of section 401(a) (relating to special rules relating to nondiscrimination requirements) is amended by adding at the end the following new subparagraph:

''(F) SOCIAL SECURITY RETIREMENT AGE.—For purposes of testing for discrimination under paragraph (4)—

''(i) the social security retirement age (as defined in section 415(b)(8)) shall be treated as a uniform retirement age, and

''(ii) subsidized early retirement benefits and joint and survivor annuities shall not be treated as being unavailable to employees on the same terms merely because such benefits or annuities are based in whole or in part on an employee's social security retirement age (as so defined).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1995.

SEC. 14237. UNIFORM PENALTY PROVISIONS TO APPLY TO CERTAIN PENSION REPORTING REQUIREMENTS.

(a) PENALTIES.—

(1) STATEMENTS.—Paragraph (1) of section 6724(d) is amended by striking ''and'' at the end of subparagraph (A), by striking the period at the end of sub-

paragraph (B) and inserting ", and", and by inserting after subparagraph (B) the following new subparagraph:

"(C) any statement of the amount of payments to another person required to be made to the Secretary under—

"(i) section 408(i) (relating to reports with respect to individual retirement accounts or annuities), or

"(ii) section 6047(d) (relating to reports by employers, plan administrators, etc.)."

(2) REPORTS.—Paragraph (2) of section 6724(d) is amended by striking "or" at the end of subparagraph (S), by striking the period at the end of subparagraph (T) and inserting a comma, and by inserting after subparagraph (T) the following new subparagraphs:

"(U) section 408(i) (relating to reports with respect to individual retirement plans) to any person other than the Secretary with respect to the amount of payments made to such person, or

"(V) section 6047(d) (relating to reports by plan administrators) to any person other than the Secretary with respect to the amount of payments made to such person."

(b) MODIFICATION OF REPORTABLE DESIGNATED DISTRIBUTIONS.—

(1) SECTION 408.—Subsection (i) of section 408 (relating to individual retirement account reports) is amended by inserting "aggregating $10 or more in any calendar year" after "distributions".

(2) SECTION 6047.—Paragraph (1) of section 6047(d) (relating to reports by employers, plan administrators, etc.) is amended by adding at the end the following new sentence: "No return or report may be required under the preceding sentence with respect to distributions to any person during any year unless such distributions aggregate $10 or more."

(c) QUALIFYING ROLLOVER DISTRIBUTIONS.—Section 6652(i) is amended—

(1) by striking "the $10" and inserting "$100", and

(2) by striking "$5,000" and inserting "$50,000".

(d) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 6047(f) is amended to read as follows:

"(1) For provisions relating to penalties for failures to file returns and reports required under this section, see sections 6652(e), 6721, and 6722."

(2) Subsection (e) of section 6652 is amended by adding at the end the following new sentence: "This subsection shall not apply to any return or statement which is an information return described in section 6724(d)(1)(C)(ii) or a payee statement described in section 6724(d)(2)(U)."

(3) Subsection (a) of section 6693 is amended by adding at the end the following new sentence: "This subsection shall not apply to any report which is an information return described in section 6724(d)(1)(C)(i) or a payee statement described in section 6724(d)(2)(T)."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to returns, reports, and other statements the due date for which (determined without regard to extensions) is after December 31, 1995.

SEC. 14238. CONTRIBUTIONS ON BEHALF OF DISABLED EMPLOYEES.

(a) ALL DISABLED PARTICIPANTS RECEIVING CONTRIBUTIONS.—Section 415(c)(3)(C) is amended by adding at the end the following: "If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1995.

SEC. 14239. TREATMENT OF DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.

(a) SPECIAL RULES FOR PLAN DISTRIBUTIONS.—Paragraph (9) of section 457(e) (relating to other definitions and special rules) is amended to read as follows:

"(9) BENEFITS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS, ETC.—

"(A) TOTAL AMOUNT PAYABLE IS $3,500 OR LESS.—The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to receive such amount (or the plan may distribute such amount without the participant's consent) if—

"(i) such amount does not exceed $3,500, and

"(ii) such amount may be distributed only if—

"(I) no amount has been deferred under the plan with respect to such participant during the 2-year period ending on the date of the distribution, and

"(II) there has been no prior distribution under the plan to such participant to which this subparagraph applied.

A plan shall not be treated as failing to meet the distribution requirements of subsection (d) by reason of a distribution to which this subparagraph applies.

"(B) ELECTION TO DEFER COMMENCEMENT OF DISTRIBUTIONS.—The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to defer commencement of distributions under the plan if—

"(i) such election is made after amounts may be available under the plan in accordance with subsection (d)(1)(A) and before commencement of such distributions, and

"(ii) the participant may make only 1 such election."

(b) COST-OF-LIVING ADJUSTMENT OF MAXIMUM DEFERRAL AMOUNT.—Subsection (e) of section 457 is amended by adding at the end the following new paragraph:

"(14) COST-OF-LIVING ADJUSTMENT OF MAXIMUM DEFERRAL AMOUNT.—The Secretary shall adjust the $7,500 amount specified in subsections (b)(2) and (c)(1) at the same time and in the same manner as under section 415(d) (determined without regard to paragraph (4)), except that the base period in applying such section for purposes of this paragraph shall be the calendar quarter ending September 30, 1994."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 14240. TRUST REQUIREMENT FOR DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS.

(a) IN GENERAL.—Section 457 is amended by adding at the end the following new subsection:

"(g) GOVERNMENTAL PLANS MUST MAINTAIN SET ASIDES FOR EXCLUSIVE BENEFIT OF PARTICIPANTS.—

"(1) IN GENERAL.—A plan maintained by an eligible employer described in subsection (e)(1)(A) shall not be treated as an eligible deferred compensation plan unless all assets and income of the plan described in subsection (b)(6) are held in trust for the exclusive benefit of participants and their beneficiaries.

"(2) TAXABILITY OF TRUSTS AND PARTICIPANTS.—For purposes of this title—

"(A) a trust described in paragraph (1) shall be treated as an organization exempt from taxation under section 501(a), and

"(B) notwithstanding any other provision of this title, amounts in the trust shall be includible in the gross income of participants and beneficiaries only to the extent, and at the time, provided in this section.

"(3) CUSTODIAL ACCOUNTS AND CONTRACTS.—For purposes of this subsection, custodial accounts and contracts described in section 401(f) shall be treated as trusts under rules similar to the rules under section 401(f)."

(b) CONFORMING AMENDMENT.—Paragraph (6) of section 457(b) is amended by inserting "except as provided in subsection (g)," before "which provides that".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to assets and income described in section 457(b)(6) of the Internal Revenue Code of 1986 held by a plan on and after the date of the enactment of this Act.

(2) TRANSITION RULE.—In the case of assets and income described in paragraph (1) held by a plan before the 90th day after the date of the enactment of this Act, a trust need not be established by reason of the amendments made by this section before such 90th day.

SEC. 14241. TRANSITION RULE FOR COMPUTING MAXIMUM BENEFITS UNDER SECTION 415 LIMITATIONS.

(a) IN GENERAL.—Subparagraph (A) of section 767(d)(3) of the Uruguay Round Agreements Act is amended to read as follows:

"(A) EXCEPTION.—A plan that was adopted and in effect before December 8, 1994, shall not be required to apply the amendments made by subsection (b) with respect to benefits accrued before the earlier of—

"(i) the later of the date a plan amendment applying such amendment is adopted or made effective, or

"(ii) the first day of the first limitation year beginning after December 31, 1999.

Determinations under section 415(b)(2)(E) of the Internal Revenue Code of 1986 shall be made with respect to such benefits on the basis of such section as in effect on December 7, 1994, and the provisions of the plan as in effect on December 7, 1994, but only if such provisions of the plan meet the requirements of such section (as so in effect).''

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the provisions of section 767 of the Uruguay Round Agreements Act.

(c) TRANSITIONAL RULE.—In the case of a plan that was adopted and in effect before December 8, 1994, if—

(1) a plan amendment was adopted or made effective on or before the date of the enactment of this Act applying the amendments made by section 767(b) of the Uruguay Round Agreements Act, and

(2) within 1 year after the date of the enactment of this Act, a plan amendment is adopted which repeals the amendment referred to in paragraph (1),

the amendment referred to in paragraph (1) shall not be taken into account in applying section 767(d)(3)(A) of the Uruguay Round Agreements Act, as amended by subsection (a).

SEC. 14242. MULTIPLE SALARY REDUCTION AGREEMENTS PERMITTED UNDER SECTION 403(b).

(a) GENERAL RULE.—For purposes of section 403(b) of the Internal Revenue Code of 1986, the frequency that an employee is permitted to enter into a salary reduction agreement, the salary to which such an agreement may apply, and the ability to revoke such an agreement shall be determined under the rules applicable to cash or deferred elections under section 401(k) of such Code.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to taxable years beginning after December 31, 1995.

SEC. 14243. WAIVER OF MINIMUM PERIOD FOR JOINT AND SURVIVOR ANNUITY EXPLANATION BEFORE ANNUITY STARTING DATE.

(a) GENERAL RULE.—For purposes of section 417(a)(3)(A) of the Internal Revenue Code of 1986 (relating to plan to provide written explanations), the minimum period prescribed by the Secretary of the Treasury between the date that the explanation referred to in such section is provided and the annuity starting date shall not apply if waived by the participant and, if applicable, the participant's spouse.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to plan years beginning after December 31, 1995.

SEC. 14244. REPEAL OF LIMITATION IN CASE OF DEFINED BENEFIT PLAN AND DEFINED CONTRIBUTION PLAN FOR SAME EMPLOYEE.

(a) IN GENERAL.—Section 415(e) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 415(b)(5) is amended by striking ''and subsection (e)''.

(2) Paragraph (1) of section 415(f) is amended by striking ''subsections (b), (c), and (e)'' and inserting ''subsections (b) and (c)''.

(3) Subsection (g) of section 415 is amended by striking ''subsections (e) and (f)'' in the last sentence and inserting ''subsection (f)''.

(4) Clause (i) of section 415(k)(2)(A) is amended to read as follows:

''(i) any contribution made directly by an employee under such an arrangement shall not be treated as an annual addition for purposes of subsection (c), and''.

(5) Clause (ii) of section 415(k)(2)(A) is amended by striking ''subsections (c) and (e)'' and inserting ''subsection (c)''.

(6) Section 416 is amended by striking subsection (h).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to limitation years beginning after December 31, 1996.

SEC. 14245. DATE FOR ADOPTION OF PLAN AMENDMENTS.

If any amendment made by this title requires an amendment to any plan, such plan amendment shall not be required to be made before the first day of the first plan year beginning on or after January 1, 1997, if—

(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment, and

(2) such plan amendment applies retroactively to such period.

Subtitle C—Treatment of Large Partnerships

PART I—GENERAL PROVISIONS

SEC. 14301. SIMPLIFIED FLOW-THROUGH FOR LARGE PARTNERSHIPS.

(a) GENERAL RULE.—Subchapter K (relating to partners and partnerships) is amended by adding at the end the following new part:

"PART IV—SPECIAL RULES FOR LARGE PARTNERSHIPS

"SEC. 771. APPLICATION OF SUBCHAPTER TO LARGE PARTNERSHIPS.

"The preceding provisions of this subchapter to the extent inconsistent with the provisions of this part shall not apply to a large partnership and its partners.

"SEC. 772. SIMPLIFIED FLOW-THROUGH.

"(a) GENERAL RULE.—In determining the income tax of a partner of a large partnership, such partner shall take into account separately such partner's distributive share of the partnership's—

"(1) taxable income or loss from passive loss limitation activities,
"(2) taxable income or loss from other activities,
"(3) net capital gain (or net capital loss)—
"(A) to the extent allocable to passive loss limitation activities, and
"(B) to the extent allocable to other activities,
"(4) tax-exempt interest,
"(5) applicable net AMT adjustment separately computed for—
"(A) passive loss limitation activities, and
"(B) other activities,
"(6) general credits,
"(7) low-income housing credit determined under section 42,
"(8) rehabilitation credit determined under section 47,
"(9) foreign income taxes,
"(10) the credit allowable under section 29, and
"(11) other items to the extent that the Secretary determines that the separate treatment of such items is appropriate.

"(b) SEPARATE COMPUTATIONS.—In determining the amounts required under subsection (a) to be separately taken into account by any partner, this section and section 773 shall be applied separately with respect to such partner by taking into account such partner's distributive share of the items of income, gain, loss, deduction, or credit of the partnership.

"(c) TREATMENT AT PARTNER LEVEL.—

"(1) IN GENERAL.—Except as provided in this subsection, rules similar to the rules of section 702(b) shall apply to any partner's distributive share of the amounts referred to in subsection (a).

"(2) INCOME OR LOSS FROM PASSIVE LOSS LIMITATION ACTIVITIES.—For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(1) shall be treated as an item of income or loss (as the case may be) from the conduct of a trade or business which is a single passive activity (as defined in section 469). A similar rule shall apply to a partner's distributive share of amounts referred to in paragraphs (3)(A) and (5)(A) of subsection (a).

"(3) INCOME OR LOSS FROM OTHER ACTIVITIES.—

"(A) IN GENERAL.—For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(2) shall be treated as an item of income or expense (as the case may be) with respect to property held for investment.

"(B) DEDUCTIONS FOR LOSS NOT SUBJECT TO SECTION 67.—The deduction under section 212 for any loss described in subparagraph (A) shall not be treated as a miscellaneous itemized deduction for purposes of section 67.

"(4) TREATMENT OF NET CAPITAL GAIN OR LOSS.—For purposes of this chapter, any partner's distributive share of any gain or loss described in subsection (a)(3) shall be treated as a long-term capital gain or loss, as the case may be.

"(5) MINIMUM TAX TREATMENT.—In determining the alternative minimum taxable income of any partner, such partner's distributive share of any applicable net AMT adjustment shall be taken into account in lieu of making the separate adjustments provided in sections 56, 57, and 58 with respect to the items of the partnership. Except as provided in regulations, the applicable net AMT adjustment shall be treated, for purposes of section 53, as an adjustment or item of tax preference not specified in section 53(d)(1)(B)(ii).

"(6) GENERAL CREDITS.—A partner's distributive share of the amount referred to in paragraph (6) of subsection (a) shall be taken into account as a current year business credit.

"(d) OPERATING RULES.—For purposes of this section—

"(1) PASSIVE LOSS LIMITATION ACTIVITY.—The term 'passive loss limitation activity' means—

"(A) any activity which involves the conduct of a trade or business, and

"(B) any rental activity.

For purposes of the preceding sentence, the term 'trade or business' includes any activity treated as a trade or business under paragraph (5) or (6) of section 469(c).

"(2) TAX-EXEMPT INTEREST.—The term 'tax-exempt interest' means interest excludable from gross income under section 103.

"(3) APPLICABLE NET AMT ADJUSTMENT.—

"(A) IN GENERAL.—The applicable net AMT adjustment is—

"(i) with respect to taxpayers other than corporations, the net adjustment determined by using the adjustments applicable to individuals, and

"(ii) with respect to corporations, the net adjustment determined by using the adjustments applicable to corporations.

"(B) NET ADJUSTMENT.—The term 'net adjustment' means the net adjustment in the items attributable to passive loss activities or other activities (as the case may be) which would result if such items were determined with the adjustments of sections 56, 57, and 58.

"(4) TREATMENT OF CERTAIN SEPARATELY STATED ITEMS.—

"(A) EXCLUSION FOR CERTAIN PURPOSES.—In determining the amounts referred to in paragraphs (1) and (2) of subsection (a), any net capital gain or net capital loss (as the case may be), and any item referred to in subsection (a)(11), shall be excluded.

"(B) ALLOCATION RULES.—The net capital gain shall be treated—

"(i) as allocable to passive loss limitation activities to the extent the net capital gain does not exceed the net capital gain determined by only taking into account gains and losses from sales and exchanges of property used in connection with such activities, and

"(ii) as allocable to other activities to the extent such gain exceeds the amount allocated under clause (i).

A similar rule shall apply for purposes of allocating any net capital loss.

"(C) NET CAPITAL LOSS.—The term 'net capital loss' means the excess of the losses from sales or exchanges of capital assets over the gains from sales or exchange of capital assets.

"(5) GENERAL CREDITS.—The term 'general credits' means any credit other than the low-income housing credit, the rehabilitation credit, the foreign tax credit, and the credit allowable under section 29.

"(6) FOREIGN INCOME TAXES.—The term 'foreign income taxes' means taxes described in section 901 which are paid or accrued to foreign countries and to possessions of the United States.

"(e) SPECIAL RULE FOR UNRELATED BUSINESS TAX.—In the case of a partner which is an organization subject to tax under section 511, such partner's distributive share of any items shall be taken into account separately to the extent necessary to comply with the provisions of section 512(c)(1).

"(f) SPECIAL RULES FOR APPLYING PASSIVE LOSS LIMITATIONS.—If any person holds an interest in a large partnership other than as a limited partner—

"(1) paragraph (2) of subsection (c) shall not apply to such partner, and

"(2) such partner's distributive share of the partnership items allocable to passive loss limitation activities shall be taken into account separately to the extent necessary to comply with the provisions of section 469.

The preceding sentence shall not apply to any items allocable to an interest held as a limited partner.

"SEC. 773. COMPUTATIONS AT PARTNERSHIP LEVEL.

"(a) GENERAL RULE.—

"(1) TAXABLE INCOME.—The taxable income of a large partnership shall be computed in the same manner as in the case of an individual except that—

"(A) the items described in section 772(a) shall be separately stated, and

"(B) the modifications of subsection (b) shall apply.

"(2) ELECTIONS.—All elections affecting the computation of the taxable income of a large partnership or the computation of any credit of a large partnership shall be made by the partnership; except that the election under section 901, and any election under section 108, shall be made by each partner separately.

"(3) LIMITATIONS, ETC.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), all limitations and other provisions affecting the computation of the taxable income of a large partnership or the computation of any credit of a large partnership shall be applied at the partnership level (and not at the partner level).

"(B) CERTAIN LIMITATIONS APPLIED AT PARTNER LEVEL.—The following provisions shall be applied at the partner level (and not at the partnership level):

"(i) Section 68 (relating to overall limitation on itemized deductions).

"(ii) Sections 49 and 465 (relating to at risk limitations).

"(iii) Section 469 (relating to limitation on passive activity losses and credits).

"(iv) Any other provision specified in regulations.

"(4) COORDINATION WITH OTHER PROVISIONS.—Paragraphs (2) and (3) shall apply notwithstanding any other provision of this chapter other than this part.

"(b) MODIFICATIONS TO DETERMINATION OF TAXABLE INCOME.—In determining the taxable income of a large partnership—

"(1) CERTAIN DEDUCTIONS NOT ALLOWED.—The following deductions shall not be allowed:

"(A) The deduction for personal exemptions provided in section 151.

"(B) The net operating loss deduction provided in section 172.

"(C) The additional itemized deductions for individuals provided in part VII of subchapter B (other than section 212 thereof).

"(2) CHARITABLE DEDUCTIONS.—In determining the amount allowable under section 170, the limitation of section 170(b)(2) shall apply.

"(3) COORDINATION WITH SECTION 67.—In lieu of applying section 67, 70 percent of the amount of the miscellaneous itemized deductions shall be disallowed.

"(c) SPECIAL RULES FOR INCOME FROM DISCHARGE OF INDEBTEDNESS.—If a large partnership has income from the discharge of any indebtedness—

"(1) such income shall be excluded in determining the amounts referred to in section 772(a), and

"(2) in determining the income tax of any partner of such partnership—

"(A) such income shall be treated as an item required to be separately taken into account under section 772(a), and

"(B) the provisions of section 108 shall be applied without regard to this part.

"SEC. 774. OTHER MODIFICATIONS.

"(a) TREATMENT OF CERTAIN OPTIONAL ADJUSTMENTS, ETC.—In the case of a large partnership—

"(1) computations under section 773 shall be made without regard to any adjustment under section 743(b) or 108(b), but

"(2) a partner's distributive share of any amount referred to in section 772(a) shall be appropriately adjusted to take into account any adjustment under section 743(b) or 108(b) with respect to such partner.

"(b) CREDIT RECAPTURE DETERMINED AT PARTNERSHIP LEVEL.—

"(1) IN GENERAL.—In the case of a large partnership—

"(A) any credit recapture shall be taken into account by the partnership, and

"(B) the amount of such recapture shall be determined as if the credit with respect to which the recapture is made had been fully utilized to reduce tax.

"(2) METHOD OF TAKING RECAPTURE INTO ACCOUNT.—A large partnership shall take into account a credit recapture by reducing the amount of the appropriate current year credit to the extent thereof, and if such recapture exceeds the amount of such current year credit, the partnership shall be liable to pay such excess.

"(3) DISPOSITIONS NOT TO TRIGGER RECAPTURE.—No credit recapture shall be required by reason of any transfer of an interest in a large partnership.

"(4) CREDIT RECAPTURE.—For purposes of this subsection, the term 'credit recapture' means any increase in tax under section 42(j) or 50(a).

"(c) PARTNERSHIP NOT TERMINATED BY REASON OF CHANGE IN OWNERSHIP.—Subparagraph (B) of section 708(b)(1) shall not apply to a large partnership.

"(d) PARTNERSHIP ENTITLED TO CERTAIN CREDITS.—The following shall be allowed to a large partnership and shall not be taken into account by the partners of such partnership:

"(1) The credit provided by section 34.

"(2) Any credit or refund under section 852(b)(3)(D).

"(e) TREATMENT OF REMIC RESIDUALS.—For purposes of applying section 860E(e)(6) to any large partnership—

"(1) all interests in such partnership shall be treated as held by disqualified organizations,

"(2) in lieu of applying subparagraph (C) of section 860E(e)(6), the amount subject to tax under section 860E(e)(6) shall be excluded from the gross income of such partnership, and

"(3) subparagraph (D) of section 860E(e)(6) shall not apply.

"(f) SPECIAL RULES FOR APPLYING CERTAIN INSTALLMENT SALE RULES.—In the case of a large partnership—

"(1) the provisions of sections 453(l)(3) and 453A shall be applied at the partnership level, and

"(2) in determining the amount of interest payable under such sections, such partnership shall be treated as subject to tax under this chapter at the highest rate of tax in effect under section 1 or 11.

"SEC. 775. LARGE PARTNERSHIP DEFINED.

"(a) GENERAL RULE.—For purposes of this part—

"(1) IN GENERAL.—Except as otherwise provided in this section or section 776, the term 'large partnership' means, with respect to any partnership taxable year, any partnership if the number of persons who were partners in such partnership in any preceding partnership taxable year beginning after December 31, 1995, equaled or exceeded 250. To the extent provided in regulations, a partnership shall cease to be treated as a large partnership for any partnership taxable year if in such taxable year fewer than 100 persons were partners in such partnership.

"(2) ELECTION FOR PARTNERSHIPS WITH AT LEAST 100 PARTNERS.—If a partnership makes an election under this paragraph, paragraph (1) shall be applied by substituting '100' for '250'. Such an election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(b) SPECIAL RULES FOR CERTAIN SERVICE PARTNERSHIPS.—

"(1) CERTAIN PARTNERS NOT COUNTED.—For purposes of this section, the term 'partner' does not include any individual performing substantial services in connection with the activities of the partnership and holding an interest in such partnership, or an individual who formerly performed substantial services in connection with such activities and who held an interest in such partnership at the time the individual performed such services.

"(2) EXCLUSION.—For purposes of this part, the term 'large partnership' does not include any partnership if substantially all the partners of such partnership—

"(A) are individuals performing substantial services in connection with the activities of such partnership or are personal service corporations (as defined in section 269A(b)) the owner-employees (as defined in section 269A(b)) of which perform such substantial services,

"(B) are retired partners who had performed such substantial services, or

"(C) are spouses of partners who are performing (or had previously performed) such substantial services.

"(3) SPECIAL RULE FOR LOWER TIER PARTNERSHIPS.—For purposes of this subsection, the activities of a partnership shall include the activities of any other partnership in which the partnership owns directly an interest in the capital and profits of at least 80 percent.

"(c) EXCLUSION OF COMMODITY POOLS.—For purposes of this part, the term 'large partnership' does not include any partnership the principal activity of which is the buying and selling of commodities (not described in section 1221(1)), or options, futures, or forwards with respect to such commodities.

"(d) SECRETARY MAY RELY ON TREATMENT ON RETURN.—If, on the partnership return of any partnership, such partnership is treated as a large partnership, such treatment shall be binding on such partnership and all partners of such partnership but not on the Secretary.

"SEC. 776. SPECIAL RULES FOR PARTNERSHIPS HOLDING OIL AND GAS PROPERTIES.

"(a) EXCEPTION FOR PARTNERSHIPS HOLDING SIGNIFICANT OIL AND GAS PROPERTIES.—

"(1) IN GENERAL.—For purposes of this part, the term 'large partnership' shall not include any partnership if the average percentage of assets (by value) held by such partnership during the taxable year which are oil or gas properties is at least 25 percent. For purposes of the preceding sentence, any interest held by a partnership in another partnership shall be disregarded, except that the partnership shall be treated as holding its proportionate share of the assets of such other partnership.

"(2) ELECTION TO WAIVE EXCEPTION.—Any partnership may elect to have paragraph (1) not apply. Such an election shall apply to the partnership taxable year for which made and all subsequent partnership taxable years unless revoked with the consent of the Secretary.

"(b) SPECIAL RULES WHERE PART APPLIES.—

"(1) COMPUTATION OF PERCENTAGE DEPLETION.—In the case of a large partnership, except as provided in paragraph (2)—

"(A) the allowance for depletion under section 611 with respect to any partnership oil or gas property shall be computed at the partnership level without regard to any provision of section 613A requiring such allowance to be computed separately by each partner,

"(B) such allowance shall be determined without regard to the provisions of section 613A(c) limiting the amount of production for which percentage depletion is allowable and without regard to paragraph (1) of section 613A(d), and

"(C) paragraph (3) of section 705(a) shall not apply.

"(2) TREATMENT OF CERTAIN PARTNERS.—

"(A) IN GENERAL.—In the case of a disqualified person, the treatment under this chapter of such person's distributive share of any item of income, gain, loss, deduction, or credit attributable to any partnership oil or gas property shall be determined without regard to this part. Such person's distributive share of any such items shall be excluded for purposes of making determinations under sections 772 and 773.

"(B) DISQUALIFIED PERSON.—For purposes of subparagraph (A), the term 'disqualified person' means, with respect to any partnership taxable year—

"(i) any person referred to in paragraph (2) or (4) of section 613A(d) for such person's taxable year in which such partnership taxable year ends, and

"(ii) any other person if such person's average daily production of domestic crude oil and natural gas for such person's taxable year in which such partnership taxable year ends exceeds 500 barrels.

"(C) AVERAGE DAILY PRODUCTION.—For purposes of subparagraph (B), a person's average daily production of domestic crude oil and natural gas for any taxable year shall be computed as provided in section 613A(c)(2)—

"(i) by taking into account all production of domestic crude oil and natural gas (including such person's proportionate share of any production of a partnership),

"(ii) by treating 6,000 cubic feet of natural gas as a barrel of crude oil, and

"(iii) by treating as 1 person all persons treated as 1 taxpayer under section 613A(c)(8) or among whom allocations are required under such section.

"SEC. 777. REGULATIONS.

"The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this part."

(b) CLERICAL AMENDMENT.—The table of parts for subchapter K of chapter 1 is amended by adding at the end the following new item:

"Part IV. Special rules for large partnerships."

SEC. 14302. SIMPLIFIED AUDIT PROCEDURES FOR LARGE PARTNERSHIPS.

(a) GENERAL RULE.—Chapter 63 is amended by adding at the end the following new subchapter:

"Subchapter D—Treatment of Large Partnerships

"PART I—TREATMENT OF PARTNERSHIP ITEMS AND ADJUSTMENTS

"SEC. 6240. APPLICATION OF SUBCHAPTER.

"(a) GENERAL RULE.—This subchapter shall only apply to large partnerships and partners in such partnerships.

"(b) COORDINATION WITH OTHER PARTNERSHIP AUDIT PROCEDURES.—

"(1) IN GENERAL.—Subchapter C of this chapter shall not apply to any large partnership other than in its capacity as a partner in another partnership which is not a large partnership.

"(2) TREATMENT WHERE PARTNER IN OTHER PARTNERSHIP.—If a large partnership is a partner in another partnership which is not a large partnership—

"(A) subchapter C of this chapter shall apply to items of such large partnership which are partnership items with respect to such other partnership, but

"(B) any adjustment under such subchapter C shall be taken into account in the manner provided by section 6242.

"SEC. 6241. PARTNER'S RETURN MUST BE CONSISTENT WITH PARTNERSHIP RETURN.

"(a) GENERAL RULE.—A partner of any large partnership shall, on the partner's return, treat each partnership item attributable to such partnership in a manner which is consistent with the treatment of such partnership item on the partnership return.

"(b) UNDERPAYMENT DUE TO INCONSISTENT TREATMENT ASSESSED AS MATH ERROR.—Any underpayment of tax by a partner by reason of failing to comply with the requirements of subsection (a) shall be assessed and collected in the same manner as if such underpayment were on account of a mathematical or clerical error appearing on the partner's return. Paragraph (2) of section 6213(b) shall not apply to any assessment of an underpayment referred to in the preceding sentence.

"(c) ADJUSTMENTS NOT TO AFFECT PRIOR YEAR OF PARTNERS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), subsections (a) and (b) shall apply without regard to any adjustment to the partnership item under part II.

"(2) CERTAIN CHANGES IN DISTRIBUTIVE SHARE TAKEN INTO ACCOUNT BY PARTNER.—

"(A) IN GENERAL.—To the extent that any adjustment under part II involves a change under section 704 in a partner's distributive share of the amount of any partnership item shown on the partnership return, such adjustment shall be taken into account in applying this title to such partner for the partner's taxable year for which such item was required to be taken into account.

"(B) COORDINATION WITH DEFICIENCY PROCEDURES.—

"(i) IN GENERAL.—Subchapter B shall not apply to the assessment or collection of any underpayment of tax attributable to an adjustment referred to in subparagraph (A).

"(ii) ADJUSTMENT NOT PRECLUDED.—Notwithstanding any other law or rule of law, nothing in subchapter B (or in any proceeding under subchapter B) shall preclude the assessment or collection of any underpayment of tax (or the allowance of any credit or refund of any overpayment of tax) attributable to an adjustment referred to in subparagraph (A) and such assessment or collection or allowance (or any notice thereof) shall not preclude any notice, proceeding, or determination under subchapter B.

"(C) PERIOD OF LIMITATIONS.—The period for—

"(i) assessing any underpayment of tax, or "(ii) filing a claim for credit or refund of any overpayment of tax, attributable to an adjustment referred to in subparagraph (A) shall not expire before the close of the period prescribed by section 6248 for making adjustments with respect to the partnership taxable year involved.

"(D) TIERED STRUCTURES.—If the partner referred to in subparagraph (A) is another partnership or an S corporation, the rules of this paragraph shall also apply to persons holding interests in such partnership or S corporation (as the case may be); except that, if such partner is a large partnership, the adjustment referred to in subparagraph (A) shall be taken into account in the manner provided by section 6242.

"(d) ADDITION TO TAX FOR FAILURE TO COMPLY WITH SECTION.—

"For addition to tax in case of partner's disregard of requirements of this section, see part II of subchapter A of chapter 68.

"SEC. 6242. PROCEDURES FOR TAKING PARTNERSHIP ADJUSTMENTS INTO ACCOUNT.

"(a) ADJUSTMENTS FLOW THROUGH TO PARTNERS FOR YEAR IN WHICH ADJUSTMENT TAKES EFFECT.—

"(1) IN GENERAL.—If any partnership adjustment with respect to any partnership item takes effect (within the meaning of subsection (d)(2)) during any partnership taxable year and if an election under paragraph (2) does not apply to such adjustment, such adjustment shall be taken into account in determining the amount of such item for the partnership taxable year in which such adjustment takes effect. In applying this title to any person who is (directly or indirectly) a partner in such partnership during such partnership taxable year, such adjustment shall be treated as an item actually arising during such taxable year.

"(2) PARTNERSHIP LIABLE IN CERTAIN CASES.—If—

"(A) a partnership elects under this paragraph to not take an adjustment into account under paragraph (1),

"(B) a partnership does not make such an election but in filing its return for any partnership taxable year fails to take fully into account any partnership adjustment as required under paragraph (1), or

"(C) any partnership adjustment involves a reduction in a credit which exceeds the amount of such credit determined for the partnership taxable year in which the adjustment takes effect,

the partnership shall pay to the Secretary an amount determined by applying the rules of subsection (b)(4) to the adjustments not so taken into account and any excess referred to in subparagraph (C). A partnership may make an election under subparagraph (A) only if such partnership meets such requirements as the Secretary may prescribe to assure payment of such amount.

"(3) OFFSETTING ADJUSTMENTS TAKEN INTO ACCOUNT.—If a partnership adjustment requires another adjustment in a taxable year after the adjusted year and before the partnership taxable year in which such partnership adjustment takes effect, such other adjustment shall be taken into account under this subsection for the partnership taxable year in which such partnership adjustment takes effect.

"(4) COORDINATION WITH PART II.—Amounts taken into account under this subsection for any partnership taxable year shall continue to be treated as adjustments for the adjusted year for purposes of determining whether such amounts may be readjusted under part II.

"(b) PARTNERSHIP LIABLE FOR INTEREST AND PENALTIES.—

"(1) IN GENERAL.—If a partnership adjustment takes effect during any partnership taxable year and such adjustment results in an imputed underpayment for the adjusted year, the partnership—

"(A) shall pay to the Secretary interest computed under paragraph (2), and

"(B) shall be liable for any penalty, addition to tax, or additional amount as provided in paragraph (3).

"(2) DETERMINATION OF AMOUNT OF INTEREST.—The interest computed under this paragraph with respect to any partnership adjustment is the interest which would be determined under chapter 67—

"(A) on the imputed underpayment determined under paragraph (4) with respect to such adjustment,

"(B) for the period beginning on the day after the return due date for the adjusted year and ending on the return due date for the partnership taxable year in which such adjustment takes effect (or, if earlier, in the case of any adjustment to which subsection (a)(2) applies, the date on which the payment under subsection (a)(2) is made).

Proper adjustments in the amount determined under the preceding sentence shall be made for adjustments required for partnership taxable years after the adjusted year and before the year in which the partnership adjustment takes effect by reason of such partnership adjustment.

"(3) PENALTIES.—A partnership shall be liable for any penalty, addition to tax, or additional amount for which it would have been liable if such partnership had been an individual subject to tax under chapter 1 for the adjusted year and the imputed underpayment determined under paragraph (4) were an actual underpayment (or understatement) for such year.

"(4) IMPUTED UNDERPAYMENT.—For purposes of this subsection, the imputed underpayment determined under this paragraph with respect to any partnership adjustment is the underpayment (if any) which would result—

"(A) by netting all adjustments to items of income, gain, loss, or deduction and by treating any net increase in income as an underpayment equal to the amount of such net increase multiplied by the highest rate of tax in effect under section 1 or 11 for the adjusted year, and

"(B) by taking adjustments to credits into account as increases or decreases (whichever is appropriate) in the amount of tax.

For purposes of the preceding sentence, any net decrease in a loss shall be treated as an increase in income and a similar rule shall apply to a net increase in a loss.

"(c) ADMINISTRATIVE PROVISIONS.—

"(1) IN GENERAL.—Any payment required by subsection (a)(2) or (b)(1)(A)—

"(A) shall be assessed and collected in the same manner as if it were a tax imposed by subtitle C, and

"(B) shall be paid on or before the return due date for the partnership taxable year in which the partnership adjustment takes effect.

"(2) INTEREST.—For purposes of determining interest, any payment required by subsection (a)(2) or (b)(1)(A) shall be treated as an underpayment of tax.

"(3) PENALTIES.—

"(A) IN GENERAL.—In the case of any failure by any partnership to pay on the date prescribed therefor any amount required by subsection (a)(2) or (b)(1)(A), there is hereby imposed on such partnership a penalty of 10 percent of the underpayment. For purposes of the preceding sentence, the term 'underpayment' means the excess of any payment required under this section over the amount (if any) paid on or before the date prescribed therefor.

"(B) ACCURACY-RELATED AND FRAUD PENALTIES MADE APPLICABLE.—For purposes of part II of subchapter A of chapter 68, any payment required by subsection (a)(2) shall be treated as an underpayment of tax.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) PARTNERSHIP ADJUSTMENT.—The term 'partnership adjustment' means any adjustment in the amount of any partnership item of a large partnership.

"(2) WHEN ADJUSTMENT TAKES EFFECT.—A partnership adjustment takes effect—

"(A) in the case of an adjustment pursuant to the decision of a court in a proceeding brought under part II, when such decision becomes final,

"(B) in the case of an adjustment pursuant to any administrative adjustment request under section 6251, when such adjustment is allowed by the Secretary, or

"(C) in any other case, when such adjustment is made.

"(3) ADJUSTED YEAR.—The term 'adjusted year' means the partnership taxable year to which the item being adjusted relates.

"(4) RETURN DUE DATE.—The term 'return due date' means, with respect to any taxable year, the date prescribed for filing the partnership return for such taxable year (determined without regard to extensions).

"(5) ADJUSTMENTS INVOLVING CHANGES IN CHARACTER.—Under regulations, appropriate adjustments in the application of this section shall be made for purposes of taking into account partnership adjustments which involve a change in the character of any item of income, gain, loss, or deduction.

"(e) PAYMENTS NONDEDUCTIBLE.—No deduction shall be allowed under subtitle A for any payment required to be made by a large partnership under this section.

"PART II—PARTNERSHIP LEVEL ADJUSTMENTS

“Subpart A—Adjustments by Secretary

“SEC. 6245. SECRETARIAL AUTHORITY.

“(a) GENERAL RULE.—The Secretary is authorized and directed to make adjustments at the partnership level in any partnership item to the extent necessary to have such item be treated in the manner required.

“(b) NOTICE OF PARTNERSHIP ADJUSTMENT.—

“(1) IN GENERAL.—If the Secretary determines that a partnership adjustment is required, the Secretary is authorized to send notice of such adjustment to the partnership by certified mail or registered mail. Such notice shall be sufficient if mailed to the partnership at its last known address even if the partnership has terminated its existence.

“(2) FURTHER NOTICES RESTRICTED.—If the Secretary mails a notice of a partnership adjustment to any partnership for any partnership taxable year and the partnership files a petition under section 6247 with respect to such notice, in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact, the Secretary shall not mail another such notice to such partnership with respect to such taxable year.

“(3) AUTHORITY TO RESCIND NOTICE WITH PARTNERSHIP CONSENT.—The Secretary may, with the consent of the partnership, rescind any notice of a partnership adjustment mailed to such partnership. Any notice so rescinded shall not be treated as a notice of a partnership adjustment, for purposes of this section, section 6246, and section 6247, and the taxpayer shall have no right to bring a proceeding under section 6247 with respect to such notice. Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding.

“SEC. 6246. RESTRICTIONS ON PARTNERSHIP ADJUSTMENTS.

“(a) GENERAL RULE.—Except as otherwise provided in this chapter, no adjustment to any partnership item may be made (and no levy or proceeding in any court for the collection of any amount resulting from such adjustment may be made, begun or prosecuted) before—

“(1) the close of the 90th day after the day on which a notice of a partnership adjustment was mailed to the partnership, and

“(2) if a petition is filed under section 6247 with respect to such notice, the decision of the court has become final.

“(b) PREMATURE ACTION MAY BE ENJOINED.—Notwithstanding section 7421(a), any action which violates subsection (a) may be enjoined in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action under this subsection unless a timely petition has been filed under section 6247 and then only in respect of the adjustments that are the subject of such petition.

“(c) EXCEPTIONS TO RESTRICTIONS ON ADJUSTMENTS.—

“(1) ADJUSTMENTS ARISING OUT OF MATH OR CLERICAL ERRORS.—

“(A) IN GENERAL.—If the partnership is notified that, on account of a mathematical or clerical error appearing on the partnership return, an adjustment to a partnership item is required, rules similar to the rules of paragraphs (1) and (2) of section 6213(b) shall apply to such adjustment.

“(B) SPECIAL RULE.—If a large partnership is a partner in another large partnership, any adjustment on account of such partnership's failure to comply with the requirements of section 6241(a) with respect to its interest in such other partnership shall be treated as an adjustment referred to in subparagraph (A), except that paragraph (2) of section 6213(b) shall not apply to such adjustment.

“(2) PARTNERSHIP MAY WAIVE RESTRICTIONS.—The partnership shall at any time (whether or not a notice of partnership adjustment has been issued) have the right, by a signed notice in writing filed with the Secretary, to waive the restrictions provided in subsection (a) on the making of any partnership adjustment.

“(d) LIMIT WHERE NO PROCEEDING BEGUN.—If no proceeding under section 6247 is begun with respect to any notice of a partnership adjustment during the 90-day period described in subsection (a), the amount for which the partnership is liable under section 6242 (and any increase in any partner's liability for tax under chapter 1 by reason of any adjustment under section 6242(a)) shall not exceed the amount determined in accordance with such notice.

"SEC. 6247. JUDICIAL REVIEW OF PARTNERSHIP ADJUSTMENT.

"(a) GENERAL RULE.—Within 90 days after the date on which a notice of a partnership adjustment is mailed to the partnership with respect to any partnership taxable year, the partnership may file a petition for a readjustment of the partnership items for such taxable year with—

"(1) the Tax Court,

"(2) the district court of the United States for the district in which the partnership's principal place of business is located, or

"(3) the Claims Court.

"(b) JURISDICTIONAL REQUIREMENT FOR BRINGING ACTION IN DISTRICT COURT OR CLAIMS COURT.—

"(1) IN GENERAL.—A readjustment petition under this section may be filed in a district court of the United States or the Claims Court only if the partnership filing the petition deposits with the Secretary, on or before the date the petition is filed, the amount for which the partnership would be liable under section 6242(b) (as of the date of the filing of the petition) if the partnership items were adjusted as provided by the notice of partnership adjustment. The court may by order provide that the jurisdictional requirements of this paragraph are satisfied where there has been a good faith attempt to satisfy such requirement and any shortfall of the amount required to be deposited is timely corrected.

"(2) INTEREST PAYABLE.—Any amount deposited under paragraph (1), while deposited, shall not be treated as a payment of tax for purposes of this title (other than chapter 67).

"(c) SCOPE OF JUDICIAL REVIEW.—A court with which a petition is filed in accordance with this section shall have jurisdiction to determine all partnership items of the partnership for the partnership taxable year to which the notice of partnership adjustment relates and the proper allocation of such items among the partners (and the applicability of any penalty, addition to tax, or additional amount for which the partnership may be liable under section 6242(b)).

"(d) DETERMINATION OF COURT REVIEWABLE.—Any determination by a court under this section shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Claims Court, as the case may be, and shall be reviewable as such. The date of any such determination shall be treated as being the date of the court's order entering the decision.

"(e) EFFECT OF DECISION DISMISSING ACTION.—If an action brought under this section is dismissed other than by reason of a rescission under section 6245(b)(3), the decision of the court dismissing the action shall be considered as its decision that the notice of partnership adjustment is correct, and an appropriate order shall be entered in the records of the court.

"SEC. 6248. PERIOD OF LIMITATIONS FOR MAKING ADJUSTMENTS.

"(a) GENERAL RULE.—Except as otherwise provided in this section, no adjustment under this subpart to any partnership item for any partnership taxable year may be made after the date which is 3 years after the later of—

"(1) the date on which the partnership return for such taxable year was filed, or

"(2) the last day for filing such return for such year (determined without regard to extensions).

"(b) EXTENSION BY AGREEMENT.—The period described in subsection (a) (including an extension period under this subsection) may be extended by an agreement entered into by the Secretary and the partnership before the expiration of such period.

"(c) SPECIAL RULE IN CASE OF FRAUD, ETC.—

"(1) FALSE RETURN.—In the case of a false or fraudulent partnership return with intent to evade tax, the adjustment may be made at any time.

"(2) SUBSTANTIAL OMISSION OF INCOME.—If any partnership omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in its return, subsection (a) shall be applied by substituting '6 years' for '3 years'.

"(3) NO RETURN.—In the case of a failure by a partnership to file a return for any taxable year, the adjustment may be made at any time.

"(4) RETURN FILED BY SECRETARY.—For purposes of this section, a return executed by the Secretary under subsection (b) of section 6020 on behalf of the partnership shall not be treated as a return of the partnership.

"(d) SUSPENSION WHEN SECRETARY MAILS NOTICE OF ADJUSTMENT.—If notice of a partnership adjustment with respect to any taxable year is mailed to the partnership, the running of the period specified in subsection (a) (as modified by the other provisions of this section) shall be suspended—

"(1) for the period during which an action may be brought under section 6247 (and, if a petition is filed under section 6247 with respect to such notice, until the decision of the court becomes final), and

"(2) for 1 year thereafter.

"Subpart B—Claims for Adjustments by Partnership

"SEC. 6251. ADMINISTRATIVE ADJUSTMENT REQUESTS.

"(a) GENERAL RULE.—A partnership may file a request for an administrative adjustment of partnership items for any partnership taxable year at any time which is—

"(1) within 3 years after the later of—

"(A) the date on which the partnership return for such year is filed, or

"(B) the last day for filing the partnership return for such year (determined without regard to extensions), and

"(2) before the mailing to the partnership of a notice of a partnership adjustment with respect to such taxable year.

"(b) SECRETARIAL ACTION.—If a partnership files an administrative adjustment request under subsection (a), the Secretary may allow any part of the requested adjustments.

"(c) SPECIAL RULE IN CASE OF EXTENSION UNDER SECTION 6248.—If the period described in section 6248(a) is extended pursuant to an agreement under section 6248(b), the period prescribed by subsection (a)(1) shall not expire before the date 6 months after the expiration of the extension under section 6248(b).

"SEC. 6252. JUDICIAL REVIEW WHERE ADMINISTRATIVE ADJUSTMENT REQUEST IS NOT ALLOWED IN FULL.

"(a) IN GENERAL.—If any part of an administrative adjustment request filed under section 6251 is not allowed by the Secretary, the partnership may file a petition for an adjustment with respect to the partnership items to which such part of the request relates with—

"(1) the Tax Court,

"(2) the district court of the United States for the district in which the principal place of business of the partnership is located, or

"(3) the Claims Court.

"(b) PERIOD FOR FILING PETITION.—A petition may be filed under subsection (a) with respect to partnership items for a partnership taxable year only—

"(1) after the expiration of 6 months from the date of filing of the request under section 6251, and

"(2) before the date which is 2 years after the date of such request.

The 2-year period set forth in paragraph (2) shall be extended for such period as may be agreed upon in writing by the partnership and the Secretary.

"(c) COORDINATION WITH SUBPART A.—

"(1) NOTICE OF PARTNERSHIP ADJUSTMENT BEFORE FILING OF PETITION.—No petition may be filed under this section after the Secretary mails to the partnership a notice of a partnership adjustment for the partnership taxable year to which the request under section 6251 relates.

"(2) NOTICE OF PARTNERSHIP ADJUSTMENT AFTER FILING BUT BEFORE HEARING OF PETITION.—If the Secretary mails to the partnership a notice of a partnership adjustment for the partnership taxable year to which the request under section 6251 relates after the filing of a petition under this subsection but before the hearing of such petition, such petition shall be treated as an action brought under section 6247 with respect to such notice, except that subsection (b) of section 6247 shall not apply.

"(3) NOTICE MUST BE BEFORE EXPIRATION OF STATUTE OF LIMITATIONS.—A notice of a partnership adjustment for the partnership taxable year shall be taken into account under paragraphs (1) and (2) only if such notice is mailed before the expiration of the period prescribed by section 6248 for making adjustments to partnership items for such taxable year.

"(d) SCOPE OF JUDICIAL REVIEW.—Except in the case described in paragraph (2) of subsection (c), a court with which a petition is filed in accordance with this section shall have jurisdiction to determine only those partnership items to which the part of the request under section 6251 not allowed by the Secretary relates and those items with respect to which the Secretary asserts adjustments as offsets to the adjustments requested by the partnership.

"(e) DETERMINATION OF COURT REVIEWABLE.—Any determination by a court under this subsection shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Claims Court, as the case may be, and shall be reviewable as such. The date of any such determination shall be treated as being the date of the court's order entering the decision.

"PART III—DEFINITIONS AND SPECIAL RULES

"SEC. 6255. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) LARGE PARTNERSHIP.—The term 'large partnership' has the meaning given to such term by section 775 without regard to section 776(a).

"(2) PARTNERSHIP ITEM.—The term 'partnership item' has the meaning given to such term by section 6231(a)(3).

"(b) PARTNERS BOUND BY ACTIONS OF PARTNERSHIP, ETC.—

"(1) DESIGNATION OF PARTNER.—Each large partnership shall designate (in the manner prescribed by the Secretary) a partner (or other person) who shall have the sole authority to act on behalf of such partnership under this subchapter. In any case in which such a designation is not in effect, the Secretary may select any partner as the partner with such authority.

"(2) BINDING EFFECT.—A large partnership and all partners of such partnership shall be bound—

"(A) by actions taken under this subchapter by the partnership, and

"(B) by any decision in a proceeding brought under this subchapter.

"(c) PARTNERSHIPS HAVING PRINCIPAL PLACE OF BUSINESS OUTSIDE THE UNITED STATES.—For purposes of sections 6247 and 6252, a principal place of business located outside the United States shall be treated as located in the District of Columbia.

"(d) TREATMENT WHERE PARTNERSHIP CEASES TO EXIST.—If a partnership ceases to exist before a partnership adjustment under this subchapter takes effect, such adjustment shall be taken into account by the former partners of such partnership under regulations prescribed by the Secretary.

"(e) DATE DECISION BECOMES FINAL.—For purposes of this subchapter, the principles of section 7481(a) shall be applied in determining the date on which a decision of a district court or the Claims Court becomes final.

"(f) PARTNERSHIPS IN CASES UNDER TITLE 11 OF THE UNITED STATES CODE.—The running of any period of limitations provided in this subchapter on making a partnership adjustment (or provided by section 6501 or 6502 on the assessment or collection of any amount required to be paid under section 6242) shall, in a case under title 11 of the United States Code, be suspended during the period during which the Secretary is prohibited by reason of such case from making the adjustment (or assessment or collection) and—

"(1) for adjustment or assessment, 60 days thereafter, and

"(2) for collection, 6 months thereafter.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subchapter, including regulations—

"(1) to prevent abuse through manipulation of the provisions of this subchapter, and

"(2) providing that this subchapter shall not apply to any case described in section 6231(c)(1) (or the regulations prescribed thereunder) where the application of this subchapter to such a case would interfere with the effective and efficient enforcement of this title.

In any case to which this subchapter does not apply by reason of paragraph (2), rules similar to the rules of sections 6229(f) and 6255(f) shall apply."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 63 is amended by adding at the end the following new item:

"SUBCHAPTER D. Treatment of large partnerships."

SEC. 14303. DUE DATE FOR FURNISHING INFORMATION TO PARTNERS OF LARGE PARTNERSHIPS.

(a) GENERAL RULE.—Subsection (b) of section 6031 (relating to copies to partners) is amended by adding at the end the following new sentence: "In the case of a large partnership (as defined in sections 775 and 776(a)), such information shall be furnished on or before the first March 15 following the close of such taxable year."

(b) TREATMENT AS INFORMATION RETURN.—Section 6724 is amended by adding at the end the following new subsection:

"(e) SPECIAL RULE FOR CERTAIN PARTNERSHIP RETURNS.—If any partnership return under section 6031(a) is required under section 6011(e) to be filed on magnetic media or in other machine-readable form, for purposes of this part, each schedule required to be included with such return with respect to each partner shall be treated as a separate information return."

SEC. 14304. RETURNS MAY BE REQUIRED ON MAGNETIC MEDIA.

Paragraph (2) of section 6011(e) (relating to returns on magnetic media) is amended by adding at the end the following new sentence:

"Notwithstanding the preceding sentence, the Secretary shall require partnerships having more than 100 partners to file returns on magnetic media."

SEC. 14305. TREATMENT OF PARTNERSHIP ITEMS OF INDIVIDUAL RETIREMENT ACCOUNTS.

Subsection (b) of section 6012 is amended by adding at the end the following new paragraph:

"(6) IRA SHARE OF PARTNERSHIP INCOME.—In the case of a trust which is exempt from taxation under section 408(e), for purposes of this section, the trust's distributive share of items of gross income and gain of any partnership to which subchapter C or D of chapter 63 applies shall be treated as equal to the trust's distributive share of the taxable income of such partnership."

SEC. 14306. EFFECTIVE DATE.

The amendments made by this part shall apply to partnership taxable years beginning after December 31, 1995.

PART II—PROVISIONS RELATED TO CERTAIN PARTNERSHIP PROCEEDINGS

SEC. 14311. TREATMENT OF PARTNERSHIP ITEMS IN DEFICIENCY PROCEEDINGS.

(a) IN GENERAL.—Subchapter C of chapter 63 is amended by adding at the end the following new section:

"SEC. 6234. DECLARATORY JUDGMENT RELATING TO TREATMENT OF ITEMS OTHER THAN PARTNERSHIP ITEMS WITH RESPECT TO AN OVERSHELTERED RETURN.

"(a) GENERAL RULE.—If—

"(1) a taxpayer files an oversheltered return for a taxable year,

"(2) the Secretary makes a determination with respect to the treatment of items (other than partnership items) of such taxpayer for such taxable year, and

"(3) the adjustments resulting from such determination do not give rise to a deficiency (as defined in section 6211) but would give rise to a deficiency if there were no net loss from partnership items,

the Secretary is authorized to send a notice of adjustment reflecting such determination to the taxpayer by certified or registered mail.

"(b) OVERSHELTERED RETURN.—For purposes of this section, the term 'oversheltered return' means an income tax return which—

"(1) shows no taxable income for the taxable year, and

"(2) shows a net loss from partnership items.

"(c) JUDICIAL REVIEW IN THE TAX COURT.—Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the day on which the notice of adjustment authorized in subsection (a) is mailed to the taxpayer, the taxpayer may file a petition with the Tax Court for redetermination of the adjustments. Upon the filing of such a petition, the Tax Court shall have jurisdiction to make a declaration with respect to all items (other than partnership items and affected items which require partner level determinations as described in section 6230(a)(2)(A)(i)) for the taxable year to which the notice of adjustment relates, in accordance with the principles of section 6214(a). Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

"(d) FAILURE TO FILE PETITION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (c), the determination of the Secretary set forth in the notice of adjustment that was mailed to the taxpayer shall be deemed to be correct.

"(2) EXCEPTION.—Paragraph (1) shall not apply after the date that the taxpayer—

"(A) files a petition with the Tax Court within the time prescribed in subsection (c) with respect to a subsequent notice of adjustment relating to the same taxable year, or

"(B) files a claim for refund of an overpayment of tax under section 6511 for the taxable year involved.

If a claim for refund is filed by the taxpayer, then solely for purposes of determining (for the taxable year involved) the amount of any computational adjustment in connection with a partnership proceeding under this subchapter (other than under this section) or the amount of any deficiency attributable to affected items in a proceeding under section 6230(a)(2), the items that are the subject of the notice of adjustment shall be presumed to have been correctly reported on the taxpayer's return during the pendency of the refund claim (and, if within the time prescribed by section 6532 the taxpayer commences a civil action for refund under section 7422, until the decision in the refund action becomes final).

"(e) LIMITATIONS PERIOD.—

"(1) IN GENERAL.—Any notice to a taxpayer under subsection (a) shall be mailed before the expiration of the period prescribed by section 6501 (relating to the period of limitations on assessment).

"(2) SUSPENSION WHEN SECRETARY MAILS NOTICE OF ADJUSTMENT.—If the Secretary mails a notice of adjustment to the taxpayer for a taxable year, the period of limitations on the making of assessments shall be suspended for the period during which the Secretary is prohibited from making the assessment (and, in any event, if a proceeding in respect of the notice of adjustment is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

"(3) RESTRICTIONS ON ASSESSMENT.—Except as otherwise provided in section 6851, 6852, or 6861, no assessment of a deficiency with respect to any tax imposed by subtitle A attributable to any item (other than a partnership item or any item affected by a partnership item) shall be made—

"(A) until the expiration of the applicable 90-day or 150-day period set forth in subsection (c) for filing a petition with the Tax Court, or

"(B) if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final.

"(f) FURTHER NOTICES OF ADJUSTMENT RESTRICTED.—If the Secretary mails a notice of adjustment to the taxpayer for a taxable year and the taxpayer files a petition with the Tax Court within the time prescribed in subsection (c), the Secretary may not mail another such notice to the taxpayer with respect to the same taxable year in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact.

"(g) COORDINATION WITH OTHER PROCEEDINGS UNDER THIS SUBCHAPTER.—

"(1) IN GENERAL.—The treatment of any item that has been determined pursuant to subsection (c) or (d) shall be taken into account in determining the amount of any computational adjustment that is made in connection with a partnership proceeding under this subchapter (other than under this section), or the amount of any deficiency attributable to affected items in a proceeding under section 6230(a)(2), for the taxable year involved. Notwithstanding any other law or rule of law pertaining to the period of limitations on the making of assessments, for purposes of the preceding sentence, any adjustment made in accordance with this section shall be taken into account regardless of whether any assessment has been made with respect to such adjustment.

"(2) SPECIAL RULE IN CASE OF COMPUTATIONAL ADJUSTMENT.—In the case of a computational adjustment that is made in connection with a partnership proceeding under this subchapter (other than under this section), the provisions of paragraph (1) shall apply only if the computational adjustment is made within the period prescribed by section 6229 for assessing any tax under subtitle A which is attributable to any partnership item or affected item for the taxable year involved.

"(3) CONVERSION TO DEFICIENCY PROCEEDING.—If—

"(A) after the notice referred to in subsection (a) is mailed to a taxpayer for a taxable year but before the expiration of the period for filing a petition with the Tax Court under subsection (c) (or, if a petition is filed with the Tax Court, before the Tax Court makes a declaration for that taxable year), the treatment of any partnership item for the taxable year is finally determined, or any such item ceases to be a partnership item pursuant to section 6231(b), and

"(B) as a result of that final determination or cessation, a deficiency can be determined with respect to the items that are the subject of the notice of adjustment,

the notice of adjustment shall be treated as a notice of deficiency under section 6212 and any petition filed in respect of the notice shall be treated as an action brought under section 6213.

"(4) FINALLY DETERMINED.—For purposes of this subsection, the treatment of partnership items shall be treated as finally determined if—

"(A) the Secretary enters into a settlement agreement (within the meaning of section 6224) with the taxpayer regarding such items,

"(B) a notice of final partnership administrative adjustment has been issued and—

"(i) no petition has been filed under section 6226 and the time for doing so has expired, or

"(ii) a petition has been filed under section 6226 and the decision of the court has become final, or

"(C) the period within which any tax attributable to such items may be assessed against the taxpayer has expired.

"(h) SPECIAL RULES IF SECRETARY INCORRECTLY DETERMINES APPLICABLE PROCEDURE.—

"(1) SPECIAL RULE IF SECRETARY ERRONEOUSLY MAILS NOTICE OF ADJUSTMENT.—If the Secretary erroneously determines that subchapter B does not apply to a taxable year of a taxpayer and consistent with that determination timely mails a notice of adjustment to the taxpayer pursuant to subsection (a) of this section, the notice of adjustment shall be treated as a notice of deficiency under section 6212 and any petition that is filed in respect of the notice shall be treated as an action brought under section 6213.

"(2) SPECIAL RULE IF SECRETARY ERRONEOUSLY MAILS NOTICE OF DEFICIENCY.—If the Secretary erroneously determines that subchapter B applies to a taxable year of a taxpayer and consistent with that determination timely mails a notice of deficiency to the taxpayer pursuant to section 6212, the notice of deficiency shall be treated as a notice of adjustment under subsection (a) and any petition that is filed in respect of the notice shall be treated as an action brought under subsection (c)."

(b) TREATMENT OF PARTNERSHIP ITEMS IN DEFICIENCY PROCEEDINGS.—Section 6211 (defining deficiency) is amended by adding at the end the following new subsection:

"(c) COORDINATION WITH SUBCHAPTER C.—In determining the amount of any deficiency for purposes of this subchapter, adjustments to partnership items shall be made only as provided in subchapter C."

(c) CLERICAL AMENDMENT.—The table of sections for subchapter C of chapter 63 is amended by adding at the end the following new item:

"Sec. 6234. Declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

SEC. 14312. PARTNERSHIP RETURN TO BE DETERMINATIVE OF AUDIT PROCEDURES TO BE FOLLOWED.

(a) IN GENERAL.—Section 6231 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

"(g) PARTNERSHIP RETURN TO BE DETERMINATIVE OF WHETHER SUBCHAPTER APPLIES.—

"(1) DETERMINATION THAT SUBCHAPTER APPLIES.—If, on the basis of a partnership return for a taxable year, the Secretary reasonably determines that this subchapter applies to such partnership for such year but such determination is erroneous, then the provisions of this subchapter are hereby extended to such partnership (and its items) for such taxable year and to partners of such partnership.

"(2) DETERMINATION THAT SUBCHAPTER DOES NOT APPLY.—If, on the basis of a partnership return for a taxable year, the Secretary reasonably determines that this subchapter does not apply to such partnership for such year but such determination is erroneous, then the provisions of this subchapter shall not apply to such partnership (and its items) for such taxable year or to partners of such partnership."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

SEC. 14313. PROVISIONS RELATING TO STATUTE OF LIMITATIONS.

(a) SUSPENSION OF STATUTE WHERE UNTIMELY PETITION FILED.—Paragraph (1) of section 6229(d) (relating to suspension where Secretary makes administrative adjustment) is amended by striking all that follows "section 6226" and inserting the following: "(and, if a petition is filed under section 6226 with respect to such administrative adjustment, until the decision of the court becomes final), and".

(b) SUSPENSION OF STATUTE DURING BANKRUPTCY PROCEEDING.—Section 6229 is amended by adding at the end the following new subsection:

"(h) SUSPENSION DURING PENDENCY OF BANKRUPTCY PROCEEDING.—If a petition is filed naming a partner as a debtor in a bankruptcy proceeding under title 11 of the United States Code, the running of the period of limitations provided in this section with respect to such partner shall be suspended—

"(1) for the period during which the Secretary is prohibited by reason of such bankruptcy proceeding from making an assessment, and

"(2) for 60 days thereafter."

(c) TAX MATTERS PARTNER IN BANKRUPTCY.—Section 6229(b) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) SPECIAL RULE WITH RESPECT TO DEBTORS IN TITLE 11 CASES.—Notwithstanding any other law or rule of law, if an agreement is entered into under paragraph (1)(B) and the agreement is signed by a person who would be the tax matters partner but for the fact that, at the time that the agreement is executed, the person is a debtor in a bankruptcy proceeding under title 11 of the United States Code, such agreement shall be binding on all partners in the partnership unless the Secretary has been notified of the bankruptcy proceeding in accordance with regulations prescribed by the Secretary."

(d) EFFECTIVE DATES.—

(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) shall apply to partnership taxable years with respect to which the period under section 6229 of the Internal Revenue Code of 1986 for assessing tax has not expired on or before the date of the enactment of this Act.

(2) SUBSECTION (c).—The amendment made by subsection (c) shall apply to agreements entered into after the date of the enactment of this Act.

SEC. 14314. EXPANSION OF SMALL PARTNERSHIP EXCEPTION.

(a) IN GENERAL.—Clause (i) of section 6231(a)(1)(B) (relating to exception for small partnerships) is amended to read as follows:

"(i) IN GENERAL.—The term 'partnership' shall not include any partnership having 10 or fewer partners each of whom is an individual (other than a nonresident alien), a C corporation, or an estate of a deceased partner. For purposes of the preceding sentence, a husband and wife (and their estates) shall be treated as 1 partner."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

SEC. 14315. EXCLUSION OF PARTIAL SETTLEMENTS FROM 1-YEAR LIMITATION ON ASSESSMENT.

(a) IN GENERAL.—Subsection (f) of section 6229 (relating to items becoming nonpartnership items) is amended—

(1) by striking "(f) ITEMS BECOMING NONPARTNERSHIP ITEMS.—If" and inserting the following:

"(f) SPECIAL RULES.—

"(1) ITEMS BECOMING NONPARTNERSHIP ITEMS.—If",

(2) by moving the text of such subsection 2 ems to the right, and

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

"(2) SPECIAL RULE FOR PARTIAL SETTLEMENT AGREEMENTS.—If a partner enters into a settlement agreement with the Secretary with respect to the treatment of some of the partnership items in dispute for a partnership taxable year but other partnership items for such year remain in dispute, the period of limitations for assessing any tax attributable to the settled items shall be determined as if such agreement had not been entered into."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to settlements entered into after the date of the enactment of this Act.

SEC. 14316. EXTENSION OF TIME FOR FILING A REQUEST FOR ADMINISTRATIVE ADJUSTMENT.

(a) IN GENERAL.—Section 6227 (relating to administrative adjustment requests) is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting after subsection (a) the following new subsection:

"(b) SPECIAL RULE IN CASE OF EXTENSION OF PERIOD OF LIMITATIONS UNDER SECTION 6229.—The period prescribed by subsection (a)(1) for filing of a request for an administrative adjustment shall be extended—

"(1) for the period within which an assessment may be made pursuant to an agreement (or any extension thereof) under section 6229(b), and

"(2) for 6 months thereafter."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

SEC. 14317. AVAILABILITY OF INNOCENT SPOUSE RELIEF IN CONTEXT OF PARTNERSHIP PROCEEDINGS.

(a) IN GENERAL.—Subsection (a) of section 6230 is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULE IN CASE OF ASSERTION BY PARTNER'S SPOUSE OF INNOCENT SPOUSE RELIEF.—

"(A) Notwithstanding section 6404(b), if the spouse of a partner asserts that section 6013(e) applies with respect to a liability that is attributable to any adjustment to a partnership item, then such spouse may file with the Secretary within 60 days after the notice of computational adjustment is mailed to the spouse a request for abatement of the assessment specified in such notice. Upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by subchapter B. The period for making any such reassessment shall not expire before the expiration of 60 days after the date of such abatement.

"(B) If the spouse files a petition with the Tax Court pursuant to section 6213 with respect to the request for abatement described in subparagraph (A), the Tax Court shall only have jurisdiction pursuant to this section to determine whether the requirements of section 6013(e) have been satisfied. For purposes of such determination, the treatment of partnership items under the settlement, the final partnership administrative adjustment, or the decision of the court (whichever is appropriate) that gave rise to the liability in question shall be conclusive.

"(C) Rules similar to the rules contained in subparagraphs (B) and (C) of paragraph (2) shall apply for purposes of this paragraph."

(b) CLAIMS FOR REFUND.—Subsection (c) of section 6230 is amended by adding at the end the following new paragraph:

"(5) RULES FOR SEEKING INNOCENT SPOUSE RELIEF.—

"(A) IN GENERAL.—The spouse of a partner may file a claim for refund on the ground that the Secretary failed to relieve the spouse under section 6013(e) from a liability that is attributable to an adjustment to a partnership item.

"(B) TIME FOR FILING CLAIM.—Any claim under subparagraph (A) shall be filed within 6 months after the day on which the Secretary mails to the spouse the notice of computational adjustment referred to in subsection (a)(3)(A).

"(C) SUIT IF CLAIM NOT ALLOWED.—If the claim under subparagraph (B) is not allowed, the spouse may bring suit with respect to the claim within the period specified in paragraph (3).

"(D) PRIOR DETERMINATIONS ARE BINDING.—For purposes of any claim or suit under this paragraph, the treatment of partnership items under the settlement, the final partnership administrative adjustment, or the decision of the court (whichever is appropriate) that gave rise to the liability in question shall be conclusive."

(c) TECHNICAL AMENDMENTS.—

(1) Paragraph (1) of section 6230(a) is amended by striking "paragraph (2)" and inserting "paragraph (2) or (3)".

(2) Subsection (a) of section 6503 is amended by striking "section 6230(a)(2)(A)" and inserting "paragraph (2)(A) or (3) of section 6230(a)".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

SEC. 14318. DETERMINATION OF PENALTIES AT PARTNERSHIP LEVEL.

(a) IN GENERAL.—Section 6221 (relating to tax treatment determined at partnership level) is amended by striking "item" and inserting "item (and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item)''.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (f) of section 6226 is amended—

(A) by striking ''relates and'' and inserting ''relates,'', and

(B) by inserting before the period '', and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item''.

(2) Clause (i) of section 6230(a)(2)(A) is amended to read as follows:

''(i) affected items which require partner level determinations (other than penalties, additions to tax, and additional amounts that relate to adjustments to partnership items), or''.

(3)(A) Subparagraph (A) of section 6230(a)(3), as added by section 14317, is amended by inserting ''(including any liability for any penalty, addition to tax, or additional amount relating to such adjustment)'' after ''partnership item''.

(B) Subparagraph (B) of such section is amended by inserting ''(and the applicability of any penalties, additions to tax, or additional amounts)'' after ''partnership items''.

(C) Subparagraph (A) of section 6230(c)(5), as added by section 14317, is amended by inserting before the period ''(including any liability for any penalties, additions to tax, or additional amounts relating to such adjustment)''.

(D) Subparagraph (D) of section 6230(c)(5), as added by section 14317, is amended by inserting ''(and the applicability of any penalties, additions to tax, or additional amounts)'' after ''partnership items''.

(4) Paragraph (1) of section 6230(c) is amended by striking ''or'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', or'', and by adding at the end the following new subparagraph:

''(C) the Secretary erroneously imposed any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item.''

(5) So much of subparagraph (A) of section 6230(c)(2) as precedes ''shall be filed'' is amended to read as follows:

''(A) UNDER PARAGRAPH (1) (A) OR (C).—Any claim under subparagraph (A) or (C) of paragraph (1)''.

(6) Paragraph (4) of section 6230(c) is amended by adding at the end the following: ''In addition, the determination under the final partnership administrative adjustment or under the decision of the court (whichever is appropriate) concerning the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item shall also be conclusive. Notwithstanding the preceding sentence, the partner shall be allowed to assert any partner level defenses that may apply or to challenge the amount of the computational adjustment.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

SEC. 14319. PROVISIONS RELATING TO COURT JURISDICTION, ETC.

(a) TAX COURT JURISDICTION TO ENJOIN PREMATURE ASSESSMENTS OF DEFICIENCIES ATTRIBUTABLE TO PARTNERSHIP ITEMS.—Subsection (b) of section 6225 is amended by striking ''the proper court.'' and inserting ''the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this subsection unless a timely petition for a readjustment of the partnership items for the taxable year has been filed and then only in respect of the adjustments that are the subject of such petition.''

(b) JURISDICTION TO CONSIDER STATUTE OF LIMITATIONS WITH RESPECT TO PARTNERS.—Paragraph (1) of section 6226(d) is amended by adding at the end the following new sentence:

''Notwithstanding subparagraph (B), any person treated under subsection (c) as a party to an action shall be permitted to participate in such action (or file a readjustment petition under subsection (b) or paragraph (2) of this subsection) solely for the purpose of asserting that the period of limitations for assessing any tax attributable to partnership items has expired with respect to such person, and the court having jurisdiction of such action shall have jurisdiction to consider such assertion.''

(c) TAX COURT JURISDICTION TO DETERMINE OVERPAYMENTS ATTRIBUTABLE TO AFFECTED ITEMS.—

(1) Paragraph (6) of section 6230(d) is amended by striking ''(or an affected item)''.

(2) Paragraph (3) of section 6512(b) is amended by adding at the end the following new sentence:

"In the case of a credit or refund relating to an affected item (within the meaning of section 6231(a)(5)), the preceding sentence shall be applied by substituting the periods under sections 6229 and 6230(d) for the periods under section 6511(b)(2), (c), and (d)."

(d) VENUE ON APPEAL.—

(1) Paragraph (1) of section 7482(b) is amended by striking "or" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting ", or", and by inserting after subparagraph (E) the following new subparagraph:

"(F) in the case of a petition under section 6234(c)—

"(i) the legal residence of the petitioner if the petitioner is not a corporation, and

"(ii) the place or office applicable under subparagraph (B) if the petitioner is a corporation."

(2) The last sentence of section 7482(b)(1) is amended by striking "or 6228(a)" and inserting ", 6228(a), or 6234(c)".

(e) OTHER PROVISIONS.—

(1) Subsection (c) of section 7459 is amended by striking "or section 6228(a)" and inserting ", 6228(a), or 6234(c)".

(2) Subsection (o) of section 6501 is amended by adding at the end the following new paragraph:

"(3) For declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return, see section 6234."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

SEC. 14320. TREATMENT OF PREMATURE PETITIONS FILED BY NOTICE PARTNERS OR 5-PERCENT GROUPS.

(a) IN GENERAL.—Subsection (b) of section 6226 (relating to judicial review of final partnership administrative adjustments) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) TREATMENT OF PREMATURE PETITIONS.—If—

"(A) a petition for a readjustment of partnership items for the taxable year involved is filed by a notice partner (or a 5-percent group) during the 90-day period described in subsection (a), and

"(B) no action is brought under paragraph (1) during the 60-day period described therein with respect to such taxable year which is not dismissed,

such petition shall be treated for purposes of paragraph (1) as filed on the last day of such 60-day period."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to petitions filed after the date of the enactment of this Act.

SEC. 14321. BONDS IN CASE OF APPEALS FROM CERTAIN PROCEEDING.

(a) IN GENERAL.—Subsection (b) of section 7485 (relating to bonds to stay assessment of collection) is amended—

(1) by inserting "penalties," after "any interest,", and

(2) by striking "aggregate of such deficiencies" and inserting "aggregate liability of the parties to the action".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

SEC. 14322. SUSPENSION OF INTEREST WHERE DELAY IN COMPUTATIONAL ADJUSTMENT RESULTING FROM CERTAIN SETTLEMENTS.

(a) IN GENERAL.—Subsection (c) of section 6601 (relating to interest on underpayment, nonpayment, or extension of time for payment, of tax) is amended by adding at the end the following new sentence: "In the case of a settlement under section 6224(c) which results in the conversion of partnership items to nonpartnership items pursuant to section 6231(b)(1)(C), the preceding sentence shall apply to a computational adjustment resulting from such settlement in the same manner as if such adjustment were a deficiency and such settlement were a waiver referred to in the preceding sentence."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to adjustments with respect to partnership taxable years beginning after the date of the enactment of this Act.

SEC. 14323. SPECIAL RULES FOR ADMINISTRATIVE ADJUSTMENT REQUESTS WITH RESPECT TO BAD DEBTS OR WORTHLESS SECURITIES.

(a) GENERAL RULE.—Section 6227 (relating to administrative adjustment requests) is amended by adding at the end the following new subsection:

"(e) REQUESTS WITH RESPECT TO BAD DEBTS OR WORTHLESS SECURITIES.—In the case of that portion of any request for an administrative adjustment which relates to the deductibility by the partnership under section 166 of a debt as a debt which became worthless, or under section 165(g) of a loss from worthlessness of a security, the period prescribed in subsection (a)(1) shall be 7 years from the last day for filing the partnership return for the year with respect to which such request is made (determined without regard to extensions)."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

(2) TREATMENT OF REQUESTS FILED BEFORE DATE OF ENACTMENT.—In the case of that portion of any request (filed before the date of the enactment of this Act) for an administrative adjustment which relates to the deductibility of a debt as a debt which became worthless or the deductibility of a loss from the worthlessness of a security—

(A) paragraph (2) of section 6227(a) of the Internal Revenue Code of 1986 shall not apply,

(B) the period for filing a petition under section 6228 of the Internal Revenue Code of 1986 with respect to such request shall not expire before the date 6 months after the date of the enactment of this Act, and

(C) such a petition may be filed without regard to whether there was a notice of the beginning of an administrative proceeding or a final partnership administrative adjustment.

Subtitle D—Foreign Provisions

PART I—MODIFICATIONS TO TREATMENT OF PASSIVE FOREIGN INVESTMENT COMPANIES

SEC. 14401. UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS NOT SUBJECT TO PFIC INCLUSION.

Section 1296 is amended by adding at the end the following new subsection:

"(e) EXCEPTION FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—

"(1) IN GENERAL.—For purposes of this part, a corporation shall not be treated with respect to a shareholder as a passive foreign investment company during the qualified portion of such shareholder's holding period with respect to stock in such corporation.

"(2) QUALIFIED PORTION.—For purposes of this subsection, the term 'qualified portion' means the portion of the shareholder's holding period—

"(A) which is after December 31, 1995, and

"(B) during which the shareholder is a United States shareholder (as defined in section 951(b)) of the corporation and the corporation is a controlled foreign corporation.

"(3) NEW HOLDING PERIOD IF QUALIFIED PORTION ENDS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if the qualified portion of a shareholder's holding period with respect to any stock ends after December 31, 1995, solely for purposes of this part, the shareholder's holding period with respect to such stock shall be treated as beginning as of the first day following such period.

"(B) EXCEPTION.—Subparagraph (A) shall not apply if such stock was, with respect to such shareholder, stock in a passive foreign investment company at any time before the qualified portion of the shareholder's holding period with respect to such stock and no election under section 1298(b)(1) is made."

SEC. 14402. ELECTION OF MARK TO MARKET FOR MARKETABLE STOCK IN PASSIVE FOREIGN INVESTMENT COMPANY.

(a) IN GENERAL.—Part VI of subchapter P of chapter 1 is amended by redesignating subpart C as subpart D, by redesignating sections 1296 and 1297 as sections 1297 and 1298, respectively, and by inserting after subpart B the following new subpart:

"Subpart C—Election of Mark to Market For Marketable Stock

"SEC. 1296. ELECTION OF MARK TO MARKET FOR MARKETABLE STOCK.

"(a) GENERAL RULE.—In the case of marketable stock in a passive foreign investment company which is owned (or treated under subsection (g) as owned) by a United States person at the close of any taxable year of such person, at the election of such person—

"(1) If the fair market value of such stock as of the close of such taxable year exceeds its adjusted basis, such United States person shall include in gross income for such taxable year an amount equal to the amount of such excess.

"(2) If the adjusted basis of such stock exceeds the fair market value of such stock as of the close of such taxable year, such United States person shall be allowed a deduction for such taxable year equal to the lesser of—

"(A) the amount of such excess, or

"(B) the unreversed inclusions with respect to such stock.

"(b) BASIS ADJUSTMENTS.—

"(1) IN GENERAL.—The adjusted basis of stock in a passive foreign investment company—

"(A) shall be increased by the amount included in the gross income of the United States person under subsection (a)(1) with respect to such stock, and

"(B) shall be decreased by the amount allowed as a deduction to the United States person under subsection (a)(2) with respect to such stock.

"(2) SPECIAL RULE FOR STOCK CONSTRUCTIVELY OWNED.—In the case of stock in a passive foreign investment company which the United States person is treated as owning under subsection (g)—

"(A) the adjustments under paragraph (1) shall apply to such stock in the hands of the person actually holding such stock but only for purposes of determining the subsequent treatment under this chapter of the United States person with respect to such stock, and

"(B) similar adjustments shall be made to the adjusted basis of the property by reason of which the United States person is treated as owning such stock.

"(c) CHARACTER AND SOURCE RULES.—

"(1) ORDINARY TREATMENT.—

"(A) GAIN.—Any amount included in gross income under subsection (a)(1), and any gain on the sale or other disposition of marketable stock in a passive foreign investment company (with respect to which an election under this section is in effect), shall be treated as ordinary income.

"(B) LOSS.—Any—

"(i) amount allowed as a deduction under subsection (a)(2), and

"(ii) loss on the sale or other disposition of marketable stock in a passive foreign investment company (with respect to which an election under this section is in effect) to the extent that the amount of such loss does not exceed the unreversed inclusions with respect to such stock,

shall be treated as an ordinary loss. The amount so treated shall be treated as a deduction allowable in computing adjusted gross income.

"(2) SOURCE.—The source of any amount included in gross income under subsection (a)(1) (or allowed as a deduction under subsection (a)(2)) shall be determined in the same manner as if such amount were gain or loss (as the case may be) from the sale of stock in the passive foreign investment company.

"(d) UNREVERSED INCLUSIONS.—For purposes of this section, the term 'unreversed inclusions' means, with respect to any stock in a passive foreign investment company, the excess (if any) of—

"(1) the amount included in gross income of the taxpayer under subsection (a)(1) with respect to such stock for prior taxable years, over

"(2) the amount allowed as a deduction under subsection (a)(2) with respect to such stock for prior taxable years.

The amount referred to in paragraph (1) shall include any amount which would have been included in gross income under subsection (a)(1) with respect to such stock for any prior taxable year but for section 1291.

"(e) MARKETABLE STOCK.—For purposes of this section—

"(1) IN GENERAL.—The term 'marketable stock' means—

"(A) any stock which is regularly traded on—

"(i) a national securities exchange which is registered with the Securities and Exchange Commission or the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or

"(ii) any exchange or other market which the Secretary determines has rules adequate to carry out the purposes of this part,

"(B) to the extent provided in regulations, stock in any foreign corporation which is comparable to a regulated investment company and which offers for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value, and

"(C) to the extent provided in regulations, any option on stock described in subparagraph (A) or (B).

"(2) SPECIAL RULE FOR REGULATED INVESTMENT COMPANIES.—In the case of any regulated investment company which is offering for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value, all stock in a passive foreign investment company which it owns directly or indirectly shall be treated as marketable stock for purposes of this section. Except as provided in regulations, similar treatment as marketable stock shall apply in the case of any other regulated investment company which publishes net asset valuations at least annually.

"(f) TREATMENT OF CONTROLLED FOREIGN CORPORATIONS WHICH ARE SHAREHOLDERS IN PASSIVE FOREIGN INVESTMENT COMPANIES.—In the case of a foreign corporation which is a controlled foreign corporation and which owns (or is treated under subsection (g) as owning) stock in a passive foreign investment company—

"(1) this section (other than subsection (c)(2)) shall apply to such foreign corporation in the same manner as if such corporation were a United States person, and

"(2) for purposes of subpart F of part III of subchapter N—

"(A) any amount included in gross income under subsection (a)(1) shall be treated as foreign personal holding company income described in section 954(c)(1)(A), and

"(B) any amount allowed as a deduction under subsection (a)(2) shall be treated as a deduction allocable to foreign personal holding company income so described.

"(g) STOCK OWNED THROUGH CERTAIN FOREIGN ENTITIES.—Except as provided in regulations—

"(1) IN GENERAL.—For purposes of this section, stock owned, directly or indirectly, by or for a foreign partnership or foreign trust or foreign estate shall be considered as being owned proportionately by its partners or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

"(2) TREATMENT OF CERTAIN DISPOSITIONS.—In any case in which a United States person is treated as owning stock in a passive foreign investment company by reason of paragraph (1)—

"(A) any disposition by the United States person or by any other person which results in the United States person being treated as no longer owning such stock, and

"(B) any disposition by the person owning such stock,

shall be treated as a disposition by the United States person of the stock in the passive foreign investment company.

"(h) COORDINATION WITH SECTION 851(b).—For purposes of paragraphs (2) and (3) of section 851(b), any amount included in gross income under subsection (a) shall be treated as a dividend.

"(i) STOCK ACQUIRED FROM A DECEDENT.—In the case of stock of a passive foreign investment company which is acquired by bequest, devise, or inheritance (or by the decedent's estate) and with respect to which an election under this section was in effect as of the date of the decedent's death, notwithstanding section 1014, the basis of such stock in the hands of the person so acquiring it shall be the adjusted basis of such stock in the hands of the decedent immediately before his death (or, if lesser, the basis which would have been determined under section 1014 without regard to this subsection).

"(j) COORDINATION WITH SECTION 1291 FOR FIRST YEAR OF ELECTION.—

"(1) TAXPAYERS OTHER THAN REGULATED INVESTMENT COMPANIES.—

"(A) IN GENERAL.—If the taxpayer elects the application of this section with respect to any marketable stock in a corporation after the beginning of the taxpayer's holding period in such stock, and if the requirements of subparagraph (B) are not satisfied, section 1291 shall apply to—

"(i) any distributions with respect to, or disposition of, such stock in the first taxable year of the taxpayer for which such election is made, and

"(ii) any amount which, but for section 1291, would have been included in gross income under subsection (a) with respect to such stock for such taxable year in the same manner as if such amount were gain on the disposition of such stock.

"(B) REQUIREMENTS.—The requirements of this subparagraph are met if, with respect to each of such corporation's taxable years for which such corporation was a passive foreign investment company and which begin after December 31, 1986, and included any portion of the taxpayer's holding period in such stock, such corporation was treated as a qualified electing fund under this part with respect to the taxpayer.

"(2) SPECIAL RULES FOR REGULATED INVESTMENT COMPANIES.—

"(A) IN GENERAL.—If a regulated investment company elects the application of this section with respect to any marketable stock in a corporation after the beginning of the taxpayer's holding period in such stock, then, with respect to such company's first taxable year for which such company elects the application of this section with respect to such stock—

"(i) section 1291 shall not apply to such stock with respect to any distribution or disposition during, or amount included in gross income under this section for, such first taxable year, but

"(ii) such regulated investment company's tax under this chapter for such first taxable year shall be increased by the aggregate amount of interest which would have been determined under section 1291(c)(3) if section 1291 were applied without regard to this subparagraph.

Clause (ii) shall not apply if for the preceding taxable year the company elected to mark to market the stock held by such company as of the last day of such preceding taxable year.

"(B) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowed to any regulated investment company for the increase in tax under subparagraph (A)(ii).

"(k) ELECTION.—This section shall apply to marketable stock in a passive foreign investment company which is held by a United States person only if such person elects to apply this section with respect to such stock. Such an election shall apply to the taxable year for which made and all subsequent taxable years unless—

"(1) such stock ceases to be marketable stock, or

"(2) the Secretary consents to the revocation of such election.

"(l) TRANSITION RULE FOR INDIVIDUALS BECOMING SUBJECT TO UNITED STATES TAX.—If any individual becomes a United States person in a taxable year beginning after December 31, 1995, solely for purposes of this section, the adjusted basis (before adjustments under subsection (b)) of any marketable stock in a passive foreign investment company owned by such individual on the first day of such taxable year shall be treated as being the greater of its fair market value on such first day or its adjusted basis on such first day."

(b) COORDINATION WITH INTEREST CHARGE, ETC.—

(1) Paragraph (1) of section 1291(d) is amended by adding at the end the following new flush sentence:

"Except as provided in section 1296(j), this section also shall not apply if an election under section 1296(k) is in effect for the taxpayer's taxable year."

(2) The subsection heading for subsection (d) of section 1291 is amended by striking "SUBPART B" and inserting "SUBPARTS B AND C".

(3) Subparagraph (A) of section 1291(a)(3) is amended to read as follows:

"(A) HOLDING PERIOD.—The taxpayer's holding period shall be determined under section 1223; except that—

"(i) for purposes of applying this section to an excess distribution, such holding period shall be treated as ending on the date of such distribution, and

"(ii) if section 1296 applied to such stock with respect to the taxpayer for any prior taxable year, such holding period shall be treated as beginning on the first day of the first taxable year beginning after the last taxable year for which section 1296 so applied."

(c) CONFORMING AMENDMENTS.—

(1) Sections 532(b)(4) and 542(c)(10) are each amended by striking "section 1296" and inserting "section 1297".

(2) Subsection (f) of section 551 is amended by striking "section 1297(b)(5)" and inserting "section 1298(b)(5)"

(3) Subsections (a)(1) and (d) of section 1293 are each amended by striking "section 1297(a)" and inserting "section 1298(a)".

(4) Paragraph (3) of section 1297(b), as redesignated by subsection (a), is hereby repealed.

(5) The table of sections for subpart D of part VI of subchapter P of chapter 1, as redesignated by subsection (a), is amended to read as follows:

"Sec. 1297. Passive foreign investment company.
"Sec. 1298. Special rules."

(6) The table of subparts for part VI of subchapter P of chapter 1 is amended by striking the last item and inserting the following new items:

"Subpart C. Election of mark to market for marketable stock.
"Subpart D. General provisions."

(d) CLARIFICATION OF GAIN RECOGNITION ELECTION.—The last sentence of section 1298(b)(1), as so redesignated, is amended by inserting "(determined without regard to the preceding sentence)" after "investment company".

SEC. 14403. MODIFICATIONS TO DEFINITION OF PASSIVE INCOME.

(a) EXCEPTION FOR SAME COUNTRY INCOME NOT TO APPLY.—Paragraph (1) of section 1297(b) (defining passive income), as redesignated by section 14402, is amended by inserting before the period "without regard to paragraph (3) thereof".

(b) PASSIVE INCOME NOT TO INCLUDE FSC INCOME.—Paragraph (2) of section 1297(b), as so redesignated, is amended by striking "or" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", or", and by inserting after subparagraph (C) the following new subparagraph:

"(D) any foreign trade income of a FSC."

SEC. 14404. EFFECTIVE DATE.

The amendments made by this part shall apply to—

(1) taxable years of United States persons beginning after December 31, 1995, and

(2) taxable years of foreign corporations ending with or within such taxable years of United States persons.

PART II—TREATMENT OF CONTROLLED FOREIGN CORPORATIONS

SEC. 14411. GAIN ON CERTAIN STOCK SALES BY CONTROLLED FOREIGN CORPORATIONS TREATED AS DIVIDENDS.

(a) GENERAL RULE.—Section 964 (relating to miscellaneous provisions) is amended by adding at the end the following new subsection:

"(e) GAIN ON CERTAIN STOCK SALES BY CONTROLLED FOREIGN CORPORATIONS TREATED AS DIVIDENDS.—

"(1) IN GENERAL.—If a controlled foreign corporation sells or exchanges stock in any other foreign corporation, gain recognized on such sale or exchange shall be included in the gross income of such controlled foreign corporation as a dividend to the same extent that it would have been so included under section 1248(a) if such controlled foreign corporation were a United States person. For purposes of determining the amount which would have been so includible, the determination of whether such other foreign corporation was a controlled foreign corporation shall be made without regard to the preceding sentence.

"(2) SAME COUNTRY EXCEPTION NOT APPLICABLE.—Clause (i) of section 954(c)(3)(A) shall not apply to any amount treated as a dividend by reason of paragraph (1).

"(3) CLARIFICATION OF DEEMED SALES.—For purposes of this subsection, a controlled foreign corporation shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such controlled foreign corporation is treated as having gain from the sale or exchange of such stock."

(b) AMENDMENT OF SECTION 904(d).—Clause (i) of section 904(d)(2)(E) is amended by striking "and except as provided in regulations, the taxpayer was a United States shareholder in such corporation".

(c) EFFECTIVE DATES.—

(1) The amendment made by subsection (a) shall apply to gain recognized on transactions occurring after the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to distributions after the date of the enactment of this Act.

SEC. 14412. MISCELLANEOUS MODIFICATIONS TO SUBPART F.

(a) SECTION 1248 GAIN TAKEN INTO ACCOUNT IN DETERMINING PRO RATA SHARE.—

(1) IN GENERAL.—Paragraph (2) of section 951(a) (defining pro rata share of subpart F income) is amended by adding at the end the following new sentence: "For purposes of subparagraph (B), any gain included in the gross income of any person as a dividend under section 1248 shall be treated as a distribution received by such person with respect to the stock involved."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to dispositions after the date of the enactment of this Act.

(b) BASIS ADJUSTMENTS IN STOCK HELD BY FOREIGN CORPORATION.—

(1) IN GENERAL.—Section 961 (relating to adjustments to basis of stock in controlled foreign corporations and of other property) is amended by adding at the end the following new subsection:

"(c) BASIS ADJUSTMENTS IN STOCK HELD BY FOREIGN CORPORATION.—Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning any stock in a controlled foreign corporation which is actually owned by another controlled foreign corporation, adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to the basis of such stock in the hands of such other controlled foreign corporation, but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations)."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply for purposes of determining inclusions for taxable years of United States shareholders beginning after December 31, 1995.

(c) DETERMINATION OF PREVIOUSLY TAXED INCOME IN SECTION 304 DISTRIBUTIONS, ETC.—

(1) IN GENERAL.—Section 959 (relating to exclusion from gross income of previously taxed earnings and profits) is amended by adding at the end the following new subsection:

"(g) ADJUSTMENTS FOR CERTAIN TRANSACTIONS.—If by reason of—

"(1) a transaction to which section 304 applies,

"(2) the structure of a United States shareholder's holdings in controlled foreign corporations, or

"(3) other circumstances,

there would be a multiple inclusion of any item in income (or an inclusion or exclusion without an appropriate basis adjustment) by reason of this subpart, the Secretary may prescribe regulations providing such modifications in the application of this subpart as may be necessary to eliminate such multiple inclusion or provide such basis adjustment, as the case may be."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(d) CLARIFICATION OF TREATMENT OF BRANCH TAX EXEMPTIONS OR REDUCTIONS.—

(1) IN GENERAL.—Subsection (b) of section 952 is amended by adding at the end the following new sentence: "For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1986.

SEC. 14413. INDIRECT FOREIGN TAX CREDIT ALLOWED FOR CERTAIN LOWER TIER COMPANIES.

(a) SECTION 902 CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 902 (relating to deemed taxes increased in case of certain 2nd and 3rd tier foreign corporations) is amended to read as follows:

"(b) DEEMED TAXES INCREASED IN CASE OF CERTAIN LOWER TIER CORPORATIONS.—

"(1) IN GENERAL.—If—

"(A) any foreign corporation is a member of a qualified group, and

"(B) such foreign corporation owns 10 percent or more of the voting stock of another member of such group from which it receives dividends in any taxable year,

such foreign corporation shall be deemed to have paid the same proportion of such other member's post-1986 foreign income taxes as would be determined under subsection (a) if such foreign corporation were a domestic corporation.

"(2) QUALIFIED GROUP.—For purposes of paragraph (1), the term 'qualified group' means—

"(A) the foreign corporation described in subsection (a), and

"(B) any other foreign corporation if—

"(i) the domestic corporation owns at least 5 percent of the voting stock of such other foreign corporation indirectly through a chain of foreign corporations connected through stock ownership of at least 10 percent of their voting stock,

"(ii) the foreign corporation described in subsection (a) is the first tier corporation in such chain, and

"(iii) such other corporation is not below the sixth tier in such chain.

The term 'qualified group' shall not include any foreign corporation below the third tier in the chain referred to in clause (i) unless such foreign corporation is a controlled foreign corporation (as defined in section 957) and the domestic corporation is a United States shareholder (as defined in section 951(b)) in such foreign corporation. Paragraph (1) shall apply to those taxes paid by a member of the qualified group below the third tier only with respect to periods during which it was a controlled foreign corporation."

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 902(c)(3) is amended by adding "or" at the end of clause (i) and by striking clauses (ii) and (iii) and inserting the following new clause:

"(ii) the requirements of subsection (b)(2) are met with respect to such foreign corporation."

(B) Subparagraph (B) of section 902(c)(4) is amended by striking "3rd foreign corporation" and inserting "sixth tier foreign corporation".

(C) The heading for paragraph (3) of section 902(c) is amended by striking "WHERE DOMESTIC CORPORATION ACQUIRES 10 PERCENT OF FOREIGN CORPORATION" and inserting "WHERE FOREIGN CORPORATION FIRST QUALIFIES".

(D) Paragraph (3) of section 902(c) is amended by striking "ownership" each place it appears.

(b) SECTION 960 CREDIT.—Paragraph (1) of section 960(a) (relating to special rules for foreign tax credits) is amended to read as follows:

"(1) DEEMED PAID CREDIT.—For purposes of subpart A of this part, if there is included under section 951(a) in the gross income of a domestic corporation any amount attributable to earnings and profits of a foreign corporation which is a member of a qualified group (as defined in section 902(b)) with respect to the domestic corporation, then, except to the extent provided in regulations, section 902 shall be applied as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B))."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of enactment of this Act.

(2) SPECIAL RULE.—In the case of any chain of foreign corporations described in clauses (i) and (ii) of section 902(b)(2)(B) of the Internal Revenue Code of 1986 (as amended by this section), no liquidation, reorganization, or similar transaction in a taxable year beginning after the date of the enactment of this Act shall have the effect of permitting taxes to be taken into account under section 902 of the Internal Revenue Code of 1986 which could not have been taken into account under such section but for such transaction.

SEC. 14414. REPEAL OF INCLUSION OF CERTAIN EARNINGS INVESTED IN EXCESS PASSIVE ASSETS.

(a) IN GENERAL.—

(1) REPEAL OF INCLUSION.—Paragraph (1) of section 951(a) (relating to amounts included in gross income of United States shareholders) is amended by striking subparagraph (C), by striking "; and" at the end of subparagraph (B) and inserting a period, and by adding "and" at the end of subparagraph (A).

(2) REPEAL OF INCLUSION AMOUNT.—Section 956A (relating to earnings invested in excess passive assets) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (G) of section 904(d)(3) is amended by striking "subparagraph (B) or (C) of section 951(a)(1)" and inserting "section 951(a)(1)(B)".

(2) Paragraph (1) of section 956(b) is amended to read as follows:

"(1) APPLICABLE EARNINGS.—For purposes of this section, the term 'applicable earnings' means, with respect to any controlled foreign corporation, the sum of—

"(A) the amount (not including a deficit) referred to in section 316(a)(1), and

"(B) the amount referred to in section 316(a)(2),

but reduced by distributions made during the taxable year."

(3) Paragraph (3) of section 956(b) is amended to read as follows:

"(3) SPECIAL RULE WHERE CORPORATION CEASES TO BE CONTROLLED FOREIGN CORPORATION.—If any foreign corporation ceases to be a controlled foreign corporation during any taxable year—

"(A) the determination of any United States shareholder's pro rata share shall be made on the basis of stock owned (within the meaning of section 958(a)) by such shareholder on the last day during the taxable year on which the foreign corporation is a controlled foreign corporation,

"(B) the average referred to in subsection (a)(1)(A) for such taxable year shall be determined by only taking into account quarters ending on or before such last day, and

"(C) in determining applicable earnings, the amount taken into account by reason of being described in paragraph (2) of section 316(a) shall be the portion of the amount so described which is allocable (on a pro rata basis) to the part of such year during which the corporation is a controlled foreign corporation."

(4) Subsection (a) of section 959 (relating to exclusion from gross income of previously taxed earnings and profits) is amended by adding "or" at the end of paragraph (1), by striking "or" at the end of paragraph (2), and by striking paragraph (3).

(5) Subsection (a) of section 959 is amended by striking "paragraphs (2) and (3)" in the last sentence and inserting "paragraph (2)".

(6) Subsection (c) of section 959 is amended by adding at the end the following flush sentence:

"References in this subsection to section 951(a)(1)(C) and subsection (a)(3) shall be treated as references to such provisions as in effect on the day before the date of the enactment of the Tax Simplification Act of 1995."

(7) Paragraph (1) of section 959(f) is amended to read as follows:

"(1) IN GENERAL.—For purposes of this section, amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3)."

(8) Paragraph (2) of section 959(f) is amended by striking "subparagraphs (B) and (C) of section 951(a)(1)" and inserting "section 951(a)(1)(B)".

(9) Subsection (b) of section 989 is amended by striking "subparagraph (B) or (C) of section 951(a)(1)" and inserting "section 951(a)(1)(B)".

(10) Paragraph (9) of section 1298(b), as redesignated by section 14402, is amended by striking "subparagraph (B) or (C) of section 951(a)(1)" and inserting "section 951(a)(1)(B)".

(11) Subsections (d)(3)(B) and (e)(2)(B)(ii) of section 1298, as redesignated by section 14402, are each amended by striking "or section 956A".

(c) CLERICAL AMENDMENT.—The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by striking the item relating to section 956A.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after September 30, 1995, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end.

PART III—OTHER PROVISIONS

SEC. 14421. EXCHANGE RATE USED IN TRANSLATING FOREIGN TAXES.

(a) ACCRUED TAXES TRANSLATED BY USING AVERAGE RATE FOR YEAR TO WHICH TAXES RELATE.—

(1) IN GENERAL.—Subsection (a) of section 986 (relating to translation of foreign taxes) is amended to read as follows:

"(a) FOREIGN INCOME TAXES.—

"(1) TRANSLATION OF ACCRUED TAXES.—

"(A) IN GENERAL.—For purposes of determining the amount of the foreign tax credit, in the case of a taxpayer who takes foreign income taxes into account when accrued, the amount of any foreign income taxes (and any adjustment thereto) shall be translated into dollars by using the average exchange rate for the taxable year to which such taxes relate.

"(B) EXCEPTION FOR TAXES NOT PAID WITHIN FOLLOWING 2 YEARS.—

"(i) Subparagraph (A) shall not apply to any foreign income taxes paid after the date 2 years after the close of the taxable year to which such taxes relate.

"(ii) Subparagraph (A) shall not apply to taxes paid before the beginning of the taxable year to which such taxes relate.

"(C) EXCEPTION FOR INFLATIONARY CURRENCIES.—Subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any currency determined to be an inflationary currency under regulations prescribed by the Secretary.

"(D) CROSS REFERENCE.—

"For adjustments where tax is not paid within 2 years, see section 905(c).

"(2) TRANSLATION OF TAXES TO WHICH PARAGRAPH (1) DOES NOT APPLY.—For purposes of determining the amount of the foreign tax credit, in the case of any foreign income taxes to which subparagraph (A) of paragraph (1) does not apply—

"(A) such taxes shall be translated into dollars using the exchange rates as of the time such taxes were paid to the foreign country or possession of the United States, and

"(B) any adjustment to the amount of such taxes shall be translated into dollars using—

"(i) except as provided in clause (ii), the exchange rate as of the time when such adjustment is paid to the foreign country or possession, or

"(ii) in the case of any refund or credit of foreign income taxes, using the exchange rate as of the time of the original payment of such foreign income taxes.

"(3) FOREIGN INCOME TAXES.—For purposes of this subsection, the term 'foreign income taxes' means any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States."

(2) ADJUSTMENT WHEN NOT PAID WITHIN 2 YEARS AFTER YEAR TO WHICH TAXES RELATE.—Subsection (c) of section 905 is amended to read as follows:

"(c) ADJUSTMENTS TO ACCRUED TAXES.—

"(1) IN GENERAL.—If—

"(A) accrued taxes when paid differ from the amounts claimed as credits by the taxpayer,

"(B) accrued taxes are not paid before the date 2 years after the close of the taxable year to which such taxes relate, or

"(C) any tax paid is refunded in whole or in part,

the taxpayer shall notify the Secretary, who shall redetermine the amount of the tax for the year or years affected.

"(2) SPECIAL RULE FOR TAXES NOT PAID WITHIN 2 YEARS.—In making the redetermination under paragraph (1), no credit shall be allowed for accrued taxes not paid before the date referred to in subparagraph (B) of paragraph (1). Any such taxes if subsequently paid shall be taken into account for the taxable year in which paid and no redetermination under this section shall be made on account of such payment.

"(3) ADJUSTMENTS.—The amount of tax due on any redetermination under paragraph (1) (if any) shall be paid by the taxpayer on notice and demand by the Secretary, and the amount of tax overpaid (if any) shall be credited or refunded to the taxpayer in accordance with subchapter B of chapter 66 (section 6511 et seq.).

"(4) BOND REQUIREMENTS.—In the case of any tax accrued but not paid, the Secretary, as a condition precedent to the allowance of the credit provided in this subpart, may require the taxpayer to give a bond, with sureties satisfactory to and approved by the Secretary, in such sum as the Secretary may require, conditioned on the payment by the taxpayer of any amount of tax found due on any such redetermination. Any such bond shall contain such further conditions as the Secretary may require.

"(5) OTHER SPECIAL RULES.—In any redetermination under paragraph (1) by the Secretary of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which credit has been allowed under this section shall be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this subpart, or deduction under section 164, shall be allowed for any taxable year with respect to any such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period."

(b) AUTHORITY TO USE AVERAGE RATES.—

(1) IN GENERAL.—Subsection (a) of section 986 (as amended by subsection (a)) is amended by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following new paragraph:

"(3) AUTHORITY TO PERMIT USE OF AVERAGE RATES.—To the extent prescribed in regulations, the average exchange rate for the period (specified in such regulations) during which the taxes or adjustment is paid may be used instead of the exchange rate as of the time of such payment."

(2) DETERMINATION OF AVERAGE RATES.—Subsection (c) of section 989 is amended by striking "and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", and", and by adding at the end the following new paragraph:

"(6) setting forth procedures for determining the average exchange rate for any period."

(3) CONFORMING AMENDMENTS.—Subsection (b) of section 989 is amended by striking "weighted" each place it appears.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a)(1) and (b) shall apply to taxes paid or accrued in taxable years beginning after December 31, 1995.

(2) SUBSECTION (a)(2).—The amendment made by subsection (a)(2) shall apply to taxes which relate to taxable years beginning after December 31, 1995.

SEC. 14422. ELECTION TO USE SIMPLIFIED SECTION 904 LIMITATION FOR ALTERNATIVE MINIMUM TAX.

(a) GENERAL RULE.—Subsection (a) of section 59 (relating to alternative minimum tax foreign tax credit) is amended by adding at the end the following new paragraph:

"(3) ELECTION TO USE SIMPLIFIED SECTION 904 LIMITATION.—

"(A) IN GENERAL.—In determining the alternative minimum tax foreign tax credit for any taxable year to which an election under this paragraph applies—

"(i) subparagraph (B) of paragraph (1) shall not apply, and

"(ii) the limitation of section 904 shall be based on the proportion which—

"(I) the taxpayer's taxable income (as determined for purposes of the regular tax) from sources without the United States (but not in excess of the taxpayer's entire alternative minimum taxable income), bears to

"(II) the taxpayer's entire alternative minimum taxable income for the taxable year.

"(B) ELECTION.—

"(i) IN GENERAL.—An election under this paragraph may be made only for the taxpayer's first taxable year which begins after December 31, 1995, and for which the taxpayer claims an alternative minimum tax foreign tax credit.

"(ii) ELECTION REVOCABLE ONLY WITH CONSENT.—An election under this paragraph, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 14423. MODIFICATION OF SECTION 1491.

(a) GENERAL RULE.—So much of chapter 5 (relating to tax on transfers to avoid income tax) as precedes section 1492 is amended to read as follows:

"CHAPTER 5—TREATMENT OF TRANSFERS TO AVOID INCOME TAX

"SEC. 1491. RECOGNITION OF GAIN.

"In the case of any transfer of property by a United States person to a foreign corporation as paid-in surplus or as a contribution to capital, to a foreign estate or trust, or to a foreign partnership, for purposes of this subtitle (other than for purposes of section 679), such transfer shall be treated as a sale or exchange for an amount equal to the fair market value of the property transferred, and the transferor shall recognize as gain the excess of—

"(1) the fair market value of the property so transferred, over

"(2) the adjusted basis (for purposes of determining gain) of such property in the hands of the transferor."

(b) CONFORMING AMENDMENTS.—

(1) Section 1057 is hereby repealed.

(2) Section 1492 is amended to read as follows:

"SEC. 1492. EXCEPTIONS.

"The provisions of section 1491 shall not apply—

"(1) If the transferee is an organization exempt from income tax under part I of subchapter F of chapter 1 (other than an organization described in section 401(a)),

"(2) To a transfer described in section 367, or

"(3) To any other transfer, to the extent provided in regulations in accordance with principles similar to the principles of section 367 or otherwise consistent with the purpose of section 1491."

(3) Section 1494 is hereby repealed.

(4) Paragraph (8) of section 6501(c) is amended by inserting "or on any transfer by reason of section 1491" after "section 367".

(5) Subsection (a) of section 6038B is amended by striking "or" at the end of paragraph (1), by adding "or" at the end of paragraph (2), and by inserting after paragraph (2) the following new paragraph:

"(3) makes any transfer described in section 1491,".

(6) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1057.

(7) The table of chapters for subtitle A is amended by striking "Tax on" in the item relating to chapter 5 and inserting "Treatment of".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after December 31, 1995.

SEC. 14424. MODIFICATION OF SECTION 367(b).

(a) GENERAL RULE.—Paragraph (1) of section 367(b) is amended to read as follows:

"(1) IN GENERAL.—In the case of any transaction described in section 332, 351, 354, 355, 356, or 361 in which the status of a foreign corporation as a corporation is a general condition for nonrecognition by 1 or more of the parties to the transaction, income shall be required to be recognized to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes. This subsection shall not apply to a transaction in which the foreign corporation is not treated as a corporation under subsection (a)(1)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transfers after December 31, 1995.

SEC. 14425. INCREASE IN FILING THRESHOLDS FOR RETURNS AS TO ORGANIZATION OF FOREIGN CORPORATIONS AND ACQUISITIONS OF STOCK IN SUCH CORPORATIONS.

(a) IN GENERAL.—Subsection (a) of section 6046 (relating to returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock) is amended to read as follows:

"(a) REQUIREMENT OF RETURN.—

"(1) IN GENERAL.—A return complying with the requirements of subsection (b) shall be made by—

"(A) each United States citizen or resident who becomes an officer or director of a foreign corporation if a United States person (as defined in section 7701(a)(30)) meets the stock ownership requirements of paragraph (2) with respect to such corporation,

"(B) each United States person—

"(i) who acquires stock which, when added to any stock owned on the date of such acquisition, meets the stock ownership requirements of paragraph (2) with respect to a foreign corporation, or

"(ii) who acquires stock which, without regard to stock owned on the date of such acquisition, meets the stock ownership requirements of paragraph (2) with respect to a foreign corporation,

"(C) each person (not described in subparagraph (B)) who is treated as a United States shareholder under section 953(c) with respect to a foreign corporation, and

"(D) each person who becomes a United States person while meeting the stock ownership requirements of paragraph (2) with respect to stock of a foreign corporation.

In the case of a foreign corporation with respect to which any person is treated as a United States shareholder under section 953(c), subparagraph (A) shall be treated as including a reference to each United States person who is an officer or director of such corporation.

"(2) STOCK OWNERSHIP REQUIREMENTS.—A person meets the stock ownership requirements of this paragraph with respect to any corporation if such person owns 10 percent or more of—

"(A) the total combined voting power of all classes of stock of such corporation entitled to vote, or

"(B) the total value of the stock of such corporation."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 1996.

SEC. 14426. APPLICATION OF UNIFORM CAPITALIZATION RULES TO FOREIGN PERSONS.

(a) IN GENERAL.—Section 263A(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

"(7) FOREIGN PERSONS.—This section shall apply to any taxpayer who is not a United States person only for purposes of—

"(A) tax liability with respect to income which is effectively connected with the conduct of a trade or business in the United States, and

"(B) tax liability of a United States shareholder (as defined in section 951(b)) with respect to amounts includible in gross income under section 951(a)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995. Section 481 of the Internal Revenue Code of 1986 shall not apply to any change in a method of accounting by reason of such amendment.

SEC. 14427. CERTAIN PRIZES AND AWARDS.

(a) IN GENERAL.—Section 863 (relating to special rules for determining source) is amended by adding at the end the following new subsection:

"(f) CERTAIN PRIZES AND AWARDS ASSOCIATED WITH AMATEUR SPORTS COMPETITIONS.—

"(1) IN GENERAL.—A prize or award received by a nonresident alien by reason of participating in an amateur sports competition in the United States shall not be treated as derived from sources within the United States if such alien performs no services for such prize or award.

"(2) AMATEUR SPORTS COMPETITION.—For purposes of paragraph (1), the term 'amateur sports competition' means any competition in which the only prizes awarded by the sponsors of the competition are of nominal value."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to prizes and awards granted after the date of the enactment of this Act.

SEC. 14428. TREATMENT FOR ESTATE TAX PURPOSES OF SHORT-TERM OBLIGATIONS HELD BY NONRESIDENT ALIENS.

(a) IN GENERAL.—Subsection (b) of section 2105 is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ", and", and by inserting after paragraph (3) the following new paragraph:

"(4) obligations which would be original issue discount obligations as defined in section 871(g)(1) but for subparagraph (B)(i) thereof, if any interest thereon (were such interest received by the decedent at the time of his death) would not be effectively connected with the conduct of a trade or business within the United States."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

Subtitle E—Other Income Tax Provisions

PART I—PROVISIONS RELATING TO S CORPORATIONS

SEC. 14501. S CORPORATIONS PERMITTED TO HAVE 75 SHAREHOLDERS.

Subparagraph (A) of section 1361(b)(1) (defining small business corporation) is amended by striking "35 shareholders" and inserting "75 shareholders".

SEC. 14502. ELECTING SMALL BUSINESS TRUSTS.

(a) GENERAL RULE.—Subparagraph (A) of section 1361(c)(2) (relating to certain trusts permitted as shareholders) is amended by inserting after clause (iv) the following new clause:

"(v) An electing small business trust."

(b) CURRENT BENEFICIARIES TREATED AS SHAREHOLDERS.—Subparagraph (B) of section 1361(c)(2) is amended by adding at the end the following new clause:

"(v) In the case of a trust described in clause (v) of subparagraph (A), each potential current beneficiary of such trust shall be treated as a shareholder; except that, if for any period there is no potential current beneficiary of such trust, such trust shall be treated as the shareholder during such period."

(c) ELECTING SMALL BUSINESS TRUST DEFINED.—Section 1361 (defining S corporation) is amended by adding at the end the following new subsection:

"(e) ELECTING SMALL BUSINESS TRUST DEFINED.—

"(1) ELECTING SMALL BUSINESS TRUST.—For purposes of this section—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'electing small business trust' means any trust if—

"(i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, or (III) an organization described in paragraph (2), (3), (4), or (5) of section 170(c) which holds a contingent interest and is not a potential current beneficiary,

"(ii) no interest in such trust was acquired by purchase, and

"(iii) an election under this subsection applies to such trust.

"(B) CERTAIN TRUSTS NOT ELIGIBLE.—The term 'electing small business trust' shall not include—

"(i) any qualified subchapter S trust (as defined in subsection (d)(3)) if an election under subsection (d)(2) applies to any corporation the stock of which is held by such trust, and

"(ii) any trust exempt from tax under this subtitle.

"(C) PURCHASE.—For purposes of subparagraph (A), the term 'purchase' means any acquisition if the basis of the property acquired is determined under section 1012.

"(2) POTENTIAL CURRENT BENEFICIARY.—For purposes of this section, the term 'potential current beneficiary' means, with respect to any period, any person who at any time during such period is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust. If a trust disposes of all of the stock which it holds in an S corporation, then, with respect to such corporation, the term 'potential current beneficiary' does not include any person who first met the requirements of the preceding sentence during the 60-day period ending on the date of such disposition.

"(3) ELECTION.—An election under this subsection shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

"(4) CROSS REFERENCE.—

"For special treatment of electing small business trusts, see section 641(d)."

(d) TAXATION OF ELECTING SMALL BUSINESS TRUSTS.—Section 641 (relating to imposition of tax on trusts) is amended by adding at the end the following new subsection:

"(d) SPECIAL RULES FOR TAXATION OF ELECTING SMALL BUSINESS TRUSTS.—

"(1) IN GENERAL.—For purposes of this chapter—

"(A) the portion of any electing small business trust which consists of stock in 1 or more S corporations shall be treated as a separate trust, and

"(B) the amount of the tax imposed by this chapter on such separate trust shall be determined with the modifications of paragraph (2).

"(2) MODIFICATIONS.—For purposes of paragraph (1), the modifications of this paragraph are the following:

"(A) Except as provided in section 1(h), the amount of the tax imposed by section 1(e) shall be determined by using the highest rate of tax set forth in section 1(e).

"(B) The exemption amount under section 55(d) shall be zero.

"(C) The only items of income, loss, deduction, or credit to be taken into account are the following:

"(i) The items required to be taken into account under section 1366.

"(ii) Any gain or loss from the disposition of stock in an S corporation.

"(iii) To the extent provided in regulations, State or local income taxes or administrative expenses to the extent allocable to items described in clauses (i) and (ii).

No deduction or credit shall be allowed for any amount not described in this paragraph, and no item described in this paragraph shall be apportioned to any beneficiary.

"(D) No amount shall be allowed under paragraph (1) or (2) of section 1211(b).

"(3) TREATMENT OF REMAINDER OF TRUST AND DISTRIBUTIONS.—For purposes of determining—

"(A) the amount of the tax imposed by this chapter on the portion of any electing small business trust not treated as a separate trust under paragraph (1), and

"(B) the distributable net income of the entire trust,

the items referred to in paragraph (2)(C) shall be excluded. Except as provided in the preceding sentence, this subsection shall not affect the taxation of any distribution from the trust.

"(4) TREATMENT OF UNUSED DEDUCTIONS WHERE TERMINATION OF SEPARATE TRUST.—If a portion of an electing small business trust ceases to be treated as a separate trust under paragraph (1), any carryover or excess deduction of the separate trust which is referred to in section 642(h) shall be taken into account by the entire trust.

"(5) ELECTING SMALL BUSINESS TRUST.—For purposes of this subsection, the term 'electing small business trust' has the meaning given such term by section 1361(e)(1)."

(e) TECHNICAL AMENDMENT.—Paragraph (1) of section 1366(a) is amended by inserting ", or of a trust or estate which terminates," after "who dies".

SEC. 14503. EXPANSION OF POST-DEATH QUALIFICATION FOR CERTAIN TRUSTS.

Subparagraph (A) of section 1361(c)(2) (relating to certain trusts permitted as shareholders) is amended—

(1) by striking "60-day period" each place it appears in clauses (ii) and (iii) and inserting "2-year period", and

(2) by striking the last sentence in clause (ii).

SEC. 14504. FINANCIAL INSTITUTIONS PERMITTED TO HOLD SAFE HARBOR DEBT.

Clause (iii) of section 1361(c)(5)(B) (defining straight debt) is amended by striking "or a trust described in paragraph (2)" and inserting "a trust described in paragraph (2), or a person which is actively and regularly engaged in the business of lending money."

SEC. 14505. RULES RELATING TO INADVERTENT TERMINATIONS AND INVALID ELECTIONS.

(a) GENERAL RULE.—Subsection (f) of section 1362 (relating to inadvertent terminations) is amended to read as follows:

"(f) INADVERTENT INVALID ELECTIONS OR TERMINATIONS.—If—

"(1) an election under subsection (a) by any corporation—

"(A) was not effective for the taxable year for which made (determined without regard to subsection (b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or

"(B) was terminated under paragraph (2) of subsection (d),

"(2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent,

"(3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken—

"(A) so that the corporation is a small business corporation, or

"(B) to acquire the required shareholder consents, and

"(4) the corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period,

then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary."

(b) LATE ELECTIONS.—Subsection (b) of section 1362 is amended by adding at the end the following new paragraph:

"(5) AUTHORITY TO TREAT LATE ELECTIONS AS TIMELY.—If—

"(A) an election under subsection (a) is made for any taxable year (determined without regard to paragraph (3)) after the date prescribed by this subsection for making such election for such taxable year, and

"(B) the Secretary determines that there was reasonable cause for the failure to timely make such election,

the Secretary may treat such election as timely made for such taxable year (and paragraph (3) shall not apply)."

(c) EFFECTIVE DATE.—The amendments made by subsection (a) and (b) shall apply with respect to elections for taxable years beginning after December 31, 1982.

SEC. 14506. AGREEMENT TO TERMINATE YEAR.

Paragraph (2) of section 1377(a) (relating to pro rata share) is amended to read as follows:

"(2) ELECTION TO TERMINATE YEAR.—

"(A) IN GENERAL.—Under regulations prescribed by the Secretary, if any shareholder terminates the shareholder's interest in the corporation during the taxable year and all affected shareholders and the corporation agree to the application of this paragraph, paragraph (1) shall be applied to the affected shareholders as if the taxable year consisted of 2 taxable years the first of which ends on the date of the termination.

"(B) AFFECTED SHAREHOLDERS.—For purposes of subparagraph (A), the term 'affected shareholders' means the shareholder whose interest is terminated and all shareholders to whom such shareholder has transferred shares during the taxable year. If such shareholder has transferred shares to the corporation, the term 'affected shareholders' shall include all persons who are shareholders during the taxable year."

SEC. 14507. EXPANSION OF POST-TERMINATION TRANSITION PERIOD.

(a) IN GENERAL.—Paragraph (1) of section 1377(b) (relating to post-termination transition period) is amended by striking "and" at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph:

"(B) the 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer which follows the termination of the corporation's election and which adjusts a subchapter S item of income, loss, or deduction of the corporation arising during the S period (as defined in section 1368(e)(2)), and".

(b) DETERMINATION DEFINED.—Paragraph (2) of section 1377(b) is amended by striking subparagraphs (A) and (B), by redesignating subparagraph (C) as subparagraph (B), and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) a determination as defined in section 1313(a), or".

(c) REPEAL OF SPECIAL AUDIT PROVISIONS FOR SUBCHAPTER S ITEMS.—

(1) GENERAL RULE.—Subchapter D of chapter 63 (relating to tax treatment of subchapter S items) is hereby repealed.

(2) CONSISTENT TREATMENT REQUIRED.—Section 6037 (relating to return of S corporation) is amended by adding at the end the following new subsection:

"(c) SHAREHOLDER'S RETURN MUST BE CONSISTENT WITH CORPORATE RETURN OR SECRETARY NOTIFIED OF INCONSISTENCY.—

"(1) IN GENERAL.—A shareholder of an S corporation shall, on such shareholder's return, treat a subchapter S item in a manner which is consistent with the treatment of such item on the corporate return.

"(2) NOTIFICATION OF INCONSISTENT TREATMENT.—

"(A) IN GENERAL.—In the case of any subchapter S item, if—

"(i)(I) the corporation has filed a return but the shareholder's treatment on his return is (or may be) inconsistent with the treatment of the item on the corporate return, or

"(II) the corporation has not filed a return, and "(ii) the shareholder files with the Secretary a statement identifying the inconsistency,

paragraph (1) shall not apply to such item.

"(B) SHAREHOLDER RECEIVING INCORRECT INFORMATION.—A shareholder shall be treated as having complied with clause (ii) of subparagraph (A) with respect to a subchapter S item if the shareholder—

"(i) demonstrates to the satisfaction of the Secretary that the treatment of the subchapter S item on the shareholder's return is consistent with the treatment of the item on the schedule furnished to the shareholder by the corporation, and

"(ii) elects to have this paragraph apply with respect to that item.

"(3) EFFECT OF FAILURE TO NOTIFY.—In any case—

"(A) described in subparagraph (A)(i)(I) of paragraph (2), and

"(B) in which the shareholder does not comply with subparagraph (A)(ii) of paragraph (2),

any adjustment required to make the treatment of the items by such shareholder consistent with the treatment of the items on the corporate return shall be treated as arising out of mathematical or clerical errors and assessed according to section 6213(b)(1). Paragraph (2) of section 6213(b) shall not apply to any assessment referred to in the preceding sentence.

"(4) SUBCHAPTER S ITEM.—For purposes of this subsection, the term 'subchapter S item' means any item of an S corporation to the extent that regulations prescribed by the Secretary provide that, for purposes of this subtitle, such item is more appropriately determined at the corporation level than at the shareholder level.

"(5) ADDITION TO TAX FOR FAILURE TO COMPLY WITH SECTION.—

"For addition to tax in the case of a shareholder's negligence in connection with, or disregard of, the requirements of this section, see part II of subchapter A of chapter 68."

(3) CONFORMING AMENDMENTS.—

(A) Section 1366 is amended by striking subsection (g).

(B) Subsection (b) of section 6233 is amended to read as follows:

"(b) SIMILAR RULES IN CERTAIN CASES.—If a partnership return is filed for any taxable year but it is determined that there is no entity for such taxable year, to the extent provided in regulations, rules similar to the rules of subsection (a) shall apply."

(C) The table of subchapters for chapter 63 is amended by striking the item relating to subchapter D.

SEC. 14508. S CORPORATIONS PERMITTED TO HOLD SUBSIDIARIES.

(a) IN GENERAL.—Paragraph (2) of section 1361(b) (defining ineligible corporation) is amended by striking subparagraph (A) and by redesignating subparagraphs (B), (C), (D), and (E) as subparagraphs (A), (B), (C), and (D), respectively.

(b) TREATMENT OF CERTAIN WHOLLY OWNED S CORPORATION SUBSIDIARIES.—Section 1361(b) (defining small business corporation) is amended by adding at the end the following new paragraph:

"(3) TREATMENT OF CERTAIN WHOLLY OWNED SUBSIDIARIES.—

"(A) IN GENERAL.—For purposes of this title—

"(i) a corporation which is a qualified subchapter S subsidiary shall not be treated as a separate corporation, and

"(ii) all assets, liabilities, and items of income, deduction, and credit of a qualified subchapter S subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

"(B) QUALIFIED SUBCHAPTER S SUBSIDIARY.—For purposes of this paragraph, the term 'qualified subchapter S subsidiary' means any domestic corporation which is not an ineligible corporation (as defined in paragraph (2)), if—

"(i) 100 percent of the stock of such corporation is held by the S corporation, and

"(ii) the S corporation elects to treat such corporation as a qualified subchapter S subsidiary.

"(C) TREATMENT OF TERMINATIONS OF QUALIFIED SUBCHAPTER S SUBSIDIARY STATUS.—For purposes of this title, if any corporation which was a qualified subchapter S subsidiary ceases to meet the requirements of subparagraph (B), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the S corporation in exchange for its stock."

(c) CERTAIN DIVIDENDS NOT TREATED AS PASSIVE INVESTMENT INCOME.—Paragraph (3) of section 1362(d) is amended by adding at the end the following new subparagraph:

"(F) TREATMENT OF CERTAIN DIVIDENDS.—If an S corporation holds stock in a C corporation meeting the requirements of section 1504(a)(2), the term 'passive investment income' shall not include dividends from such C corporation to the extent such dividends are attributable to the earnings and profits of such C corporation derived from the active conduct of a trade or business."

(d) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 1361 is amended by striking paragraph (6).

(2) Subsection (b) of section 1504 (defining includible corporation) is amended by adding at the end the following new paragraph:

"(8) An S corporation."

SEC. 14509. TREATMENT OF DISTRIBUTIONS DURING LOSS YEARS.

(a) ADJUSTMENTS FOR DISTRIBUTIONS TAKEN INTO ACCOUNT BEFORE LOSSES.—

(1) Subparagraph (A) of section 1366(d)(1) (relating to losses and deductions cannot exceed shareholder's basis in stock and debt) is amended by striking "paragraph (1)" and inserting "paragraphs (1) and (2)(A)".

(2) Subsection (d) of section 1368 (relating to certain adjustments taken into account) is amended by adding at the end the following new sentence:

"In the case of any distribution made during any taxable year, the adjusted basis of the stock shall be determined with regard to the adjustments provided in paragraph (1) of section 1367(a) for the taxable year."

(b) ACCUMULATED ADJUSTMENTS ACCOUNT.—Paragraph (1) of section 1368(e) (relating to accumulated adjustments account) is amended by adding at the end the following new subparagraph:

"(C) NET LOSS FOR YEAR DISREGARDED.—

"(i) IN GENERAL.—In applying this section to distributions made during any taxable year, the amount in the accumulated adjustments account as of the close of such taxable year shall be determined without regard to any net negative adjustment for such taxable year.

"(ii) NET NEGATIVE ADJUSTMENT.—For purposes of clause (i), the term 'net negative adjustment' means, with respect to any taxable year, the excess (if any) of—

"(I) the reductions in the account for the taxable year (other than for distributions), over

"(II) the increases in such account for such taxable year."

(c) CONFORMING AMENDMENTS.—Subparagraph (A) of section 1368(e)(1) is amended—

(1) by striking "as provided in subparagraph (B)" and inserting "as otherwise provided in this paragraph", and

(2) by striking "section 1367(b)(2)(A)" and inserting "section 1367(a)(2)".

SEC. 14510. TREATMENT OF S CORPORATIONS UNDER SUBCHAPTER C.

Subsection (a) of section 1371 (relating to application of subchapter C rules) is amended to read as follows:

"(a) APPLICATION OF SUBCHAPTER C RULES.—Except as otherwise provided in this title, and except to the extent inconsistent with this subchapter, subchapter C shall apply to an S corporation and its shareholders."

SEC. 14511. ELIMINATION OF CERTAIN EARNINGS AND PROFITS.

(a) IN GENERAL.—If—

(1) a corporation was an electing small business corporation under subchapter S of chapter 1 of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1983, and

(2) such corporation is an S corporation under subchapter S of chapter 1 of such Code for its first taxable year beginning after December 31, 1995,

the amount of such corporation's accumulated earnings and profits (as of the beginning of such first taxable year) shall be reduced by an amount equal to the portion (if any) of such accumulated earnings and profits which were accumulated in any taxable year beginning before January 1, 1983, for which such corporation was an electing small business corporation under such subchapter S.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 1362(d) is amended—

(A) by striking "SUBCHAPTER C" in the paragraph heading and inserting "ACCUMULATED",

(B) by striking "subchapter C" in subparagraph (A)(i)(I) and inserting "accumulated", and

(C) by striking subparagraph (B) and redesignating the following subparagraphs accordingly.

(2)(A) Subsection (a) of section 1375 is amended by striking "subchapter C" in paragraph (1) and inserting "accumulated".

(B) Paragraph (3) of section 1375(b) is amended to read as follows:

"(3) PASSIVE INVESTMENT INCOME, ETC.—The terms 'passive investment income' and 'gross receipts' have the same respective meanings as when used in paragraph (3) of section 1362(d)."

(C) The section heading for section 1375 is amended by striking "subchapter c" and inserting "accumulated".

(D) The table of sections for part III of subchapter S of chapter 1 is amended by striking "subchapter C" in the item relating to section 1375 and inserting "accumulated".

(3) Clause (i) of section 1042(c)(4)(A) is amended by striking "section 1362(d)(3)(D)" and inserting "section 1362(d)(3)(C)".

SEC. 14512. CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS UNDER AT-RISK RULES ALLOWED.

Paragraph (3) of section 1366(d) (relating to carryover of disallowed losses and deductions to post-termination transition period) is amended by adding at the end the following new subparagraph:

"(D) AT-RISK LIMITATIONS.—To the extent that any increase in adjusted basis described in subparagraph (B) would have increased the shareholder's amount at risk under section 465 if such increase had occurred on the day preceding the commencement of the post-termination transition period, rules similar to the rules described in subparagraphs (A) through (C) shall apply to any losses disallowed by reason of section 465(a)."

SEC. 14513. ADJUSTMENTS TO BASIS OF INHERITED S STOCK TO REFLECT CERTAIN ITEMS OF INCOME.

(a) IN GENERAL.—Subsection (b) of section 1367 (relating to adjustments to basis of stock of shareholders, etc.) is amended by adding at the end the following new paragraph:

"(4) ADJUSTMENTS IN CASE OF INHERITED STOCK.—

"(A) IN GENERAL.—If any person acquires stock in an S corporation by reason of the death of a decedent or by bequest, devise, or inheritance, section 691 shall be applied with respect to any item of income of the S corporation in the same manner as if the decedent had held directly his pro rata share of such item.

"(B) ADJUSTMENTS TO BASIS.—The basis determined under section 1014 of any stock in an S corporation shall be reduced by the portion of the value of the stock which is attributable to items constituting income in respect of the decedent."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply in the case of decedents dying after the date of the enactment of this Act.

SEC. 14514. S CORPORATIONS ELIGIBLE FOR RULES APPLICABLE TO REAL PROPERTY SUBDIVIDED FOR SALE BY NONCORPORATE TAXPAYERS.

(a) IN GENERAL.—Subsection (a) of section 1237 (relating to real property subdivided for sale) is amended by striking "other than a corporation" in the material preceding paragraph (1) and inserting "other than a C corporation".

(b) CONFORMING AMENDMENT.—Subparagraph (A) of section 1237(a)(2) is amended by inserting "an S corporation which included the taxpayer as a shareholder," after "controlled by the taxpayer,".

SEC. 14515. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this part, the amendments made by this part shall apply to taxable years beginning after December 31, 1995.

(b) TREATMENT OF CERTAIN ELECTIONS UNDER PRIOR LAW.—For purposes of section 1362(g) of the Internal Revenue Code of 1986 (relating to election after termination), any termination under section 1362(d) of such Code in a taxable year beginning before January 1, 1996, shall not be taken into account.

PART II—PROVISIONS RELATING TO REGULATED INVESTMENT COMPANIES

SEC. 14521. REPEAL OF 30-PERCENT GROSS INCOME LIMITATION.

(a) GENERAL RULE.—Subsection (b) of section 851 (relating to limitations) is amended by striking paragraph (3), by adding "and" at the end of paragraph (2), and by redesignating paragraph (4) as paragraph (3).

(b) TECHNICAL AMENDMENTS.—

(1) The material following paragraph (3) of section 851(b) (as redesignated by subsection (a)) is amended—

(A) by striking out "paragraphs (2) and (3)" and inserting "paragraph (2)", and

(B) by striking out the last sentence thereof.

(2) Subsection (c) of section 851 is amended by striking "subsection (b)(4)" each place it appears (including the heading) and inserting "subsection (b)(3)".

(3) Subsection (d) of section 851 is amended by striking "subsections (b)(4)" and inserting "subsections (b)(3)".

(4) Paragraph (1) of section 851(e) is amended by striking "subsection (b)(4)" and inserting "subsection (b)(3)".

(5) Paragraph (4) of section 851(e) is amended by striking "subsections (b)(4)" and inserting "subsections (b)(3)".

(6) Section 851 is amended by striking subsection (g) and redesignating subsection (h) as subsection (g).

(7) Subsection (g) of section 851 (as redesignated by paragraph (6)) is amended by striking paragraph (3).

(8) Section 817(h)(2) is amended—

(A) by striking "851(b)(4)" in subparagraph (A) and inserting "851(b)(3)", and

(B) by striking "851(b)(4)(A)(i)" in subparagraph (B) and inserting "851(b)(3)(A)(i)".

(9) Section 1092(f)(2) is amended by striking "Except for purposes of section 851(b)(3), the" and inserting "The".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

PART III—PROVISIONS RELATING TO REAL ESTATE INVESTMENT TRUSTS

SEC. 14531. CLARIFICATION OF LIMITATION ON MAXIMUM NUMBER OF SHAREHOLDERS.

(a) RULES RELATING TO DETERMINATION OF OWNERSHIP.—

(1) FAILURE TO ISSUE SHAREHOLDER DEMAND LETTER NOT TO DISQUALIFY REIT.—Section 857(a) (relating to requirements applicable to real estate investment trusts) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(2) SHAREHOLDER DEMAND LETTER REQUIREMENT; PENALTY.—Section 857 (relating to taxation of real estate investment trusts and their beneficiaries) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) REAL ESTATE INVESTMENT TRUSTS TO ASCERTAIN OWNERSHIP.—

"(1) IN GENERAL.—Each real estate investment trust shall each taxable year comply with regulations prescribed by the Secretary for the purposes of ascertaining the actual ownership of the outstanding shares, or certificates of beneficial interest, of such trust.

"(2) FAILURE TO COMPLY.—

"(A) IN GENERAL.—If a real estate investment trust fails to comply with the requirements of paragraph (1) for a taxable year, such trust shall pay (on notice and demand by the Secretary and in the same manner as tax) a penalty of $25,000.

"(B) INTENTIONAL DISREGARD.—If any failure under paragraph (1) is due to intentional disregard of the requirement under paragraph (1), the penalty under subparagraph (A) shall be $50,000.

"(C) FAILURE TO COMPLY AFTER NOTICE.—The Secretary may require a real estate investment trust to take such actions as the Secretary determines appropriate to ascertain actual ownership if the trust fails to meet the requirements of paragraph (1). If the trust fails to take such actions, the trust shall pay (on notice and demand by the Secretary and in the same manner as tax) an additional penalty equal to the penalty determined under subparagraph (A) or (B), whichever is applicable.

"(D) REASONABLE CAUSE.—No penalty shall be imposed under this paragraph with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect."

(b) COMPLIANCE WITH CLOSELY HELD PROHIBITION.—

(1) IN GENERAL.—Section 856 (defining real estate investment trust) is amended by adding at the end the following new subsection:

"(k) REQUIREMENT THAT ENTITY NOT BE CLOSELY HELD TREATED AS MET IN CERTAIN CASES.—A corporation, trust, or association—

"(1) which for a taxable year meets the requirements of section 857(f)(1), and

"(2) which does not know, or exercising reasonable diligence would not have known, whether the entity failed to meet the requirement of subsection (a)(6), shall be treated as having met the requirement of subsection (a)(6) for the taxable year."

(2) CONFORMING AMENDMENT.—Paragraph (6) of section 856(a) is amended by inserting "subject to the provisions of subsection (k)," before "which is not".

SEC. 14532. DE MINIMIS RULE FOR TENANT SERVICES INCOME.

(a) IN GENERAL.—Paragraph (2) of section 856(d) (defining rents from real property) is amended by striking subparagraph (C) and the last sentence and inserting:

"(C) any impermissible tenant service income (as defined in paragraph (7))."

(b) IMPERMISSIBLE TENANT SERVICE INCOME.—Section 856(d) is amended by adding at the end the following new paragraph:

"(7) IMPERMISSIBLE TENANT SERVICE INCOME.—For purposes of paragraph (2)(C)—

"(A) IN GENERAL.—The term 'impermissible tenant service income' means, with respect to any real or personal property, any amount received or accrued directly or indirectly by the real estate investment trust for—

"(i) services furnished or rendered by the trust to the tenants of such property, or

"(ii) managing or operating such property.

"(B) DISQUALIFICATION OF ALL AMOUNTS WHERE MORE THAN DE MINIMIS AMOUNT.—If the amount described in subparagraph (A) with respect to a property for any taxable year exceeds 1 percent of all amounts received or accrued during such taxable year directly or indirectly by the real estate investment trust with respect to such property, the impermissible tenant service income of the trust with respect to the property shall include all such amounts.

"(C) EXCEPTIONS.—For purposes of subparagraph (A)—

"(i) services furnished or rendered, or management or operation provided, through an independent contractor from whom the trust itself does not derive or receive any income shall not be treated as furnished, rendered, or provided by the trust, and

"(ii) there shall not be taken into account any amount which would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).

"(D) AMOUNT ATTRIBUTABLE TO IMPERMISSIBLE SERVICES.—For purposes of subparagraph (A), the amount treated as received for any service (or management or operation) shall not be less than 150 percent of the direct cost of the trust in furnishing or rendering the service (or providing the management or operation).

"(E) COORDINATION WITH LIMITATIONS.—For purposes of paragraphs (2) and (3) of subsection (c), amounts described in subparagraph (A) shall be included in the gross income of the corporation, trust, or association."

SEC. 14533. ATTRIBUTION RULES APPLICABLE TO TENANT OWNERSHIP.

Section 856(d)(5) (relating to constructive ownership of stock) is amended by adding at the end the following: "For purposes of paragraph (2)(B), section 318(a)(3)(A) shall be applied under the preceding sentence in the case of a partnership by taking into account only partners who own (directly or indirectly) 25 percent or more of the capital interest, or the profits interest, in the partnership."

SEC. 14534. CREDIT FOR TAX PAID BY REIT ON RETAINED CAPITAL GAINS.

(a) GENERAL RULE.—Paragraph (3) of section 857(b) (relating to capital gains) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) TREATMENT BY SHAREHOLDERS OF UNDISTRIBUTED CAPITAL GAINS.—

"(i) Every shareholder of a real estate investment trust at the close of the trust's taxable year shall include, in computing his long-term capital gains in his return for his taxable year in which the last day of the trust's taxable year falls, such amount as the trust shall designate in respect of such shares in a written notice mailed to its shareholders at any time prior to the expiration of 60 days after the close of its taxable year (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year), but the amount so includible by any shareholder shall not exceed that part of the amount subjected to tax in subparagraph (A)(ii) which he would have received if all of such amount had been distributed as capital gain dividends by the trust to the holders of such shares at the close of its taxable year.

"(ii) For purposes of this title, every such shareholder shall be deemed to have paid, for his taxable year under clause (i), the tax imposed by subparagraph (A)(ii) on the amounts required by this subparagraph to be included in respect of such shares in computing his long-term capital gains for that year; and such shareholders shall be allowed credit or refund as the case may be, for the tax so deemed to have been paid by him.

"(iii) The adjusted basis of such shares in the hands of the holder shall be increased with respect to the amounts required by this subparagraph to be included in computing his long-term capital gains, by the difference between the amount of such includible gains and the tax deemed paid by such shareholder in respect of such shares under clause (ii).

"(iv) In the event of such designation, the tax imposed by subparagraph (A)(ii) shall be paid by the real estate investment trust within 30 days after the close of its taxable year.

"(v) The earnings and profits of such real estate investment trust, and the earnings and profits of any such shareholder which is a corporation, shall be appropriately adjusted in accordance with regulations prescribed by the Secretary.

"(vi) As used in this subparagraph, the terms 'shares' and 'shareholders' shall include beneficial interests and holders of beneficial interests, respectively."

(b) CONFORMING AMENDMENTS.—

(1) Clause (i) of section 857(b)(7)(A) is amended by striking "subparagraph (B)" and inserting "subparagraph (B) or (D)".

(2) Clause (iii) of section 852(b)(3)(D) is amended by striking "by 65 percent" and all that follows and inserting "by the difference between the amount of such includible gains and the tax deemed paid by such shareholder in respect of such shares under clause (ii)."

SEC. 14535. REPEAL OF 30-PERCENT GROSS INCOME REQUIREMENT.

(a) GENERAL RULE.—Subsection (c) of section 856 (relating to limitations) is amended—

(1) by adding "and" at the end of paragraph (3),

(2) by striking paragraphs (4) and (8), and

(3) by redesignating paragraphs (5), (6), and (7) as paragraphs (4), (5), and (6), respectively.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (G) of section 856(c)(5), as redesignated by subsection (a), is amended by striking "and such agreement shall be treated as a security for purposes of paragraph (4)(A)".

(2) Paragraph (5) of section 857(b) is amended by striking "section 856(c)(7)" and inserting "section 856(c)(6)".

(3) Subparagraph (C) of section 857(b)(6) is amended by striking "section 856(c)(6)(B)" and inserting "section 856(c)(5)(B)".

SEC. 14536. MODIFICATION OF EARNINGS AND PROFITS RULES FOR DETERMINING WHETHER REIT HAS EARNINGS AND PROFITS FROM NON-REIT YEAR.

Subsection (d) of section 857 is amended by adding at the end the following new paragraph:

"(3) DISTRIBUTIONS TO MEET REQUIREMENTS OF SUBSECTION (a)(2)(B).—Any distribution which is made in order to comply with the requirements of subsection (a)(2)(B)—

"(A) shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from the earliest accumulated earnings and profits (other than earnings and profits to which subsection (a)(2)(A) applies) rather than the most recently accumulated earnings and profits, and

"(B) to the extent treated under subparagraph (A) as made from accumulated earnings and profits, shall not be treated as a distribution for purposes of subsection (b)(2)(B)."

SEC. 14537. TREATMENT OF FORECLOSURE PROPERTY.

(a) GRACE PERIODS.—

(1) INITIAL PERIOD.—Paragraph (2) of section 856(e) (relating to special rules for foreclosure property) is amended by striking "on the date which is 2 years after the date the trust acquired such property" and inserting "as of the close of the 3d taxable year following the taxable year in which the trust acquired such property".

(2) EXTENSION.—Paragraph (3) of section 856(e) is amended—

(A) by striking "or more extensions" and inserting "extension", and

(B) by striking the last sentence and inserting: "Any such extension shall not extend the grace period beyond the close of the 3d taxable year following the last taxable year in the period under paragraph (2)."

(b) REVOCATION OF ELECTION.—Paragraph (5) of section 856(e) is amended by striking the last sentence and inserting: "A real estate investment trust may revoke any such election for a taxable year by filing the revocation (in the manner provided by the Secretary) on or before the due date (including any extension of time) for filing its return of tax under this chapter for the taxable year. If a trust revokes an election for any property, no election may be made by the trust under this paragraph with respect to the property for any subsequent taxable year."

(c) CERTAIN ACTIVITIES NOT TO DISQUALIFY PROPERTY.—Paragraph (4) of section 856(e) is amended by adding at the end the following new flush sentence:

"For purposes of subparagraph (C), property shall not be treated as used in a trade or business by reason of any activities of the real estate investment trust with respect to such property to the extent that such activities would not result in amounts received or accrued, directly or indirectly, with respect to such property being treated as other than rents from real property."

SEC. 14538. PAYMENTS UNDER HEDGING INSTRUMENTS.

Section 856(c)(5)(G) (relating to treatment of certain interest rate agreements), as redesignated by section 14535, is amended to read as follows:

"(G) TREATMENT OF CERTAIN HEDGING INSTRUMENTS.—Except to the extent provided by regulations, any—

"(i) payment to a real estate investment trust under an interest rate swap or cap agreement, option, futures contract, forward rate agreement, or any similar financial instrument, entered into by the trust in a transaction to reduce the interest rate risks with respect to any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets, and

"(ii) gain from the sale or other disposition of any such investment,

shall be treated as income qualifying under paragraph (2)."

SEC. 14539. EXCESS NONCASH INCOME.

Section 857(e)(2) (relating to determination of amount of excess noncash income) is amended—

(1) by striking subparagraph (B),

(2) by striking the period at the end of subparagraph (C) and inserting a comma,

(3) by redesignating subparagraph (C) (as amended by paragraph (2)) as subparagraph (B), and

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

"(C) the amount (if any) by which—

"(i) the amounts includible in gross income with respect to instruments to which section 860E(a) or 1272 applies, exceed

"(ii) the amount of money and the fair market value of other property received during the taxable year under such instruments, and

"(D) amounts includible in income by reason of cancellation of indebtedness."

SEC. 14540. PROHIBITED TRANSACTION SAFE HARBOR.

Clause (iii) of section 857(b)(6)(C) (relating to certain sales not to constitute prohibited transactions) is amended by striking "(other than foreclosure property)" in subclauses (I) and (II) and inserting "(other than sales of foreclosure property or sales to which section 1033 applies)".

SEC. 14541. SHARED APPRECIATION MORTGAGES.

(a) BANKRUPTCY SAFE HARBOR.—Section 856(j) (relating to treatment of shared appreciation mortgages) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) COORDINATION WITH 4-YEAR HOLDING PERIOD.—

"(A) IN GENERAL.—For purposes of section 857(b)(6)(C), if a real estate investment trust is treated as having sold secured property under paragraph (3)(A), the trust shall be treated as having held such property for at least 4 years if—

"(i) the secured property is sold or otherwise disposed of pursuant to a case under title 11 of the United States Code,

"(ii) the seller is under the jurisdiction of the court in such case, and

"(iii) the disposition is required by the court or is pursuant to a plan approved by the court.

"(B) EXCEPTION.—Subparagraph (A) shall not apply if—

"(i) the secured property was acquired by the trust with the intent to evict or foreclose, or

"(ii) the trust knew or had reason to know that default on the obligation described in paragraph (5)(A) would occur."

(b) CLARIFICATION OF DEFINITION OF SHARED APPRECIATION PROVISION.—Clause (ii) of section 856(j)(5)(A) is amended by inserting before the period "or appreciation in value as of any specified date".

SEC. 14542. WHOLLY OWNED SUBSIDIARIES.

Section 856(i)(2) (defining qualified REIT subsidiary) is amended by striking "at all times during the period such corporation was in existence".

SEC. 14543. EFFECTIVE DATE.

The amendments made by this part shall apply to taxable years beginning after the date of the enactment of this Act.

PART IV—ACCOUNTING PROVISIONS

SEC. 14551. MODIFICATIONS TO LOOK-BACK METHOD FOR LONG-TERM CONTRACTS.

(a) LOOK-BACK METHOD NOT TO APPLY IN CERTAIN CASES.—Subsection (b) of section 460 (relating to percentage of completion method) is amended by adding at the end the following new paragraph:

"(6) ELECTION TO HAVE LOOK-BACK METHOD NOT APPLY IN DE MINIMIS CASES.—

"(A) AMOUNTS TAKEN INTO ACCOUNT AFTER COMPLETION OF CONTRACT.—Paragraph (1)(B) shall not apply with respect to any taxable year (beginning after the taxable year in which the contract is completed) if—

"(i) the cumulative taxable income (or loss) under the contract as of the close of such taxable year, is within

"(ii) 10 percent of the cumulative look-back taxable income (or loss) under the contract as of the close of the most recent taxable year to which paragraph (1)(B) applied (or would have applied but for subparagraph (B)).

"(B) DE MINIMIS DISCREPANCIES.—Paragraph (1)(B) shall not apply in any case to which it would otherwise apply if—

"(i) the cumulative taxable income (or loss) under the contract as of the close of each prior contract year, is within

"(ii) 10 percent of the cumulative look-back income (or loss) under the contract as of the close of such prior contract year.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) CONTRACT YEAR.—The term 'contract year' means any taxable year for which income is taken into account under the contract.

"(ii) LOOK-BACK INCOME OR LOSS.—The look-back income (or loss) is the amount which would be the taxable income (or loss) under the contract if the allocation method set forth in paragraph (2)(A) were used in determining taxable income.

"(iii) DISCOUNTING NOT APPLICABLE.—The amounts taken into account after the completion of the contract shall be determined without regard to any discounting under the 2nd sentence of paragraph (2).

"(D) CONTRACTS TO WHICH PARAGRAPH APPLIES.—This paragraph shall only apply if the taxpayer makes an election under this subparagraph. Unless revoked with the consent of the Secretary, such an election shall apply to all long-term contracts completed during the taxable year for which election is made or during any subsequent taxable year."

(b) MODIFICATION OF INTEREST RATE.—

(1) IN GENERAL.—Subparagraph (C) of section 460(b)(2) is amended by striking "the overpayment rate established by section 6621" and inserting "the adjusted overpayment rate (as defined in paragraph (7))".

(2) ADJUSTED OVERPAYMENT RATE.—Subsection (b) of section 460 is amended by adding at the end the following new paragraph:

"(7) ADJUSTED OVERPAYMENT RATE.—

"(A) IN GENERAL.—The adjusted overpayment rate for any interest accrual period is the overpayment rate in effect under section 6621 for the calendar quarter in which such interest accrual period begins.

"(B) INTEREST ACCRUAL PERIOD.—For purposes of subparagraph (A), the term 'interest accrual period' means the period—

"(i) beginning on the day after the return due date for any taxable year of the taxpayer, and

"(ii) ending on the return due date for the following taxable year.

For purposes of the preceding sentence, the term 'return due date' means the date prescribed for filing the return of the tax imposed by this chapter (determined without regard to extensions)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contracts completed in taxable years ending after the date of the enactment of this Act.

SEC. 14552. APPLICATION OF MARK TO MARKET ACCOUNTING METHOD TO TRADERS IN SECURITIES.

(a) IN GENERAL.—Section 475 (relating to mark to market accounting method for dealers in securities) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) AUTHORITY TO EXTEND METHOD TO TRADERS IN SECURITIES.—

"(1) IN GENERAL.—A trader in securities may elect to have the provisions of this section (other than subsection (d)(3)) apply to securities held by the trader. Such election may be made only with the consent of the Secretary.

"(2) TRADER IN SECURITIES.—For purposes of this subsection, the term 'trader in securities' means a taxpayer who is regularly engaged in trading securities."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on and after December 31, 1995.

SEC. 14553. MODIFICATION OF RULING AMOUNTS FOR NUCLEAR DECOMMISSIONING COSTS.

(a) IN GENERAL.—Section 468A(d) (relating to ruling amount) is amended by adding at the end the following new paragraph:

"(4) NONSUBSTANTIAL MODIFICATIONS.—A taxpayer may modify a schedule of ruling amounts under paragraph (1) without a review under paragraph (3) if such modification does not substantially modify the ruling amount. The taxpayer shall notify the Secretary of any such modification."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to modifications after the date of the enactment of this Act.

SEC. 14554. ELECTION OF ALTERNATIVE TAXABLE YEARS BY PARTNERSHIPS AND S CORPORATIONS.

(a) REPEAL OF LIMITATION ON WHAT TAXABLE YEAR MAY BE ELECTED.—

(1) IN GENERAL.—Section 444(b) (relating to limitations on taxable years which may be elected) is amended by adding at the end the following new paragraph:

"(5) LIMITATIONS NOT TO APPLY TO CERTAIN PARTNERSHIPS AND S CORPORATIONS.—

"(A) IN GENERAL.—In the case of a partnership or an S corporation, this subsection shall not apply to an election under subsection (a) for a taxable year beginning after December 31, 1996.

"(B) SPECIAL RULE FOR EXISTING ELECTIONS.—

"(i) IN GENERAL.—If a partnership or S corporation has an election in effect for its last taxable year beginning before January 1, 1997, the partnership or S corporation may elect to have this paragraph apply beginning with any taxable year beginning after December 31, 1996. Such an election may be made without the consent of the Secretary and shall not be treated as a termination of an election for purposes of subsection (d).

"(ii) TREATMENT OF REQUIRED PAYMENTS.—A partnership or S corporation making an election under clause (i) may elect to have its net required payment balance (within the meaning of section 7519(e)(4))—

"(I) credited against its first estimated tax payment under section 6654A for its first full taxable year for which such section applies, or

"(II) refunded to it at the time provided in section 7519(c)(3)."

(2) EFFECT OF ELECTION.—Paragraph (1) of section 444(c) (relating to effect of election) is amended to read as follows:

"(1) in the case of a partnership or S corporation, such entity shall—

"(A) make the payments required by section 7519, or

"(B) if subsection (b)(5) applies to the election, make the estimated tax payments described in section 6654A, and".

(b) ESTIMATED TAX FOR PARTNERSHIPS AND S CORPORATIONS MAKING TAXABLE YEAR ELECTIONS.—Part I of subchapter A of chapter 68 (relating to additions to tax and additional amounts) is amended by inserting after section 6654 the following new section:

"SEC. 6654A. FAILURE BY ELECTING PARTNERSHIP OR S CORPORATION TO PAY ESTIMATED TAX.

"(a) PENALTY.—Except as otherwise provided in this section, in the case of a partnership or S corporation with respect to which an election to which section 444(b)(5) applies is in effect (hereafter referred to as 'the entity'), there is hereby imposed a penalty for each quarter for which there is an underpayment in an amount determined by applying—

"(1) the underpayment rate established under section 6621,

"(2) to the amount of the underpayment,

"(3) for the period of the underpayment.

"(b) AMOUNT OF UNDERPAYMENT; PERIOD OF UNDERPAYMENT.—For purposes of subsection (a)—

"(1) AMOUNT.—The amount of the underpayment shall be the excess of—

"(A) the required installment, over

"(B) the amount (if any) of the installment paid on or before the due date for the installment.

"(2) PERIOD OF UNDERPAYMENT.—The period of the underpayment shall run from the due date for the installment to the earlier of—

"(A) the first April 15 more than 3 months after the close of the taxable year, or

"(B) with respect to any portion of the underpayment, the date on which such portion is paid.

"(3) ORDER OF CREDITING PAYMENTS.—For purposes of paragraph (2)(B), a payment of estimated tax shall be credited against unpaid required installments in the order in which the installments are required to be paid.

"(c) REQUIRED INSTALLMENTS.—For purposes of this section—

"(1) NUMBER AND DATES.—An entity shall make 4 required installments which shall be due on the 15th day of the 3d, 5th, 8th, and 12th months of the taxable year.

"(2) NO REQUIRED PAYMENTS WHERE ENTITY'S LIABILITY IS LESS THAN $5,000.—An entity shall not be required to make estimated payments under this section for any taxable year for which (but for this paragraph) its aggregate liability under this section would be less than $5,000.

"(3) AMOUNT.—The amount of each required installment shall be 25 percent of the product of—

"(A) the entity's applicable income determined under its applicable method for the quarter for which the installment is being made, and

"(B) the applicable rate.

"(4) APPLICABLE RATE.—

"(A) IN GENERAL.—The term 'applicable rate' means 34 percent (39.6 percent in the case of an entity described in subparagraph (B)).

"(B) HIGH AVERAGE INCOME ENTITY.—

"(i) IN GENERAL.—An entity is described in this subparagraph if—

"(I) the average applicable income of 2-percent owners of the entity for its base year is $250,000 or more, or

"(II) in the case of a partnership, its applicable income for the base year is $10,000,000 or more.

An entity shall not be treated as so described if it has no base year.

"(ii) 2-PERCENT OWNER.—The term '2-percent owner' means—

"(I) in the case of a partnership, any person who owns (or is considered as owning within the meaning of section 318) on any day during the base year more than 2 percent of the capital interests of the partnerships, and

"(II) in the case of an S corporation, a 2-percent shareholder (as defined in section 1372(b)).

"(5) ADJUSTMENTS UNDER ANNUALIZED INCOME METHOD.—An entity using the annualized income method shall adjust its required installment for any quarter to reflect any change in its required installment for any prior quarter in the taxable year which would have been required if the annualized applicable income for the current quarter had been used for the prior quarter.

"(d) APPLICABLE METHOD.—For purposes of this section—

"(1) IN GENERAL.—An entity shall determine its applicable income on the basis of the 100-percent method.

"(2) EXCEPTIONS.—

"(A) ELECTIONS.—An entity may determine its applicable income—

"(i) for all quarters in a taxable year on the basis of the 110-percent method if it elects such method on or before the due date for the first quarterly installment, or

"(ii) for any quarter in a taxable year on the basis of the annualized income method if it elects such method on or before the due date for the quarterly installment for such quarter.

An election under clause (ii) shall apply for the quarter for which made and all subsequent quarters during the taxable year.

"(B) LARGE INCREASE IN INCOME.—If an entity's applicable income for the taxable year exceeds its applicable income for the base year by more than $750,000, the entity may not use the 110-percent method for the taxable year.

"(3) METHODS.—

"(A) 100-PERCENT METHOD.—Under the 100-percent method, an entity's applicable income shall be its applicable income for the taxable year.

"(B) 110-PERCENT METHOD.—Under the 110-percent method, an entity's applicable income shall be 110 percent of its applicable income for the base year.

"(C) ANNUALIZED INCOME METHOD.—Under the annualized income method, the entity's applicable income for purposes of determining the required installment for any quarter shall be an amount equal to the product of—

"(i) its applicable income for the period consisting of the months in the taxable year ending before the due date for the quarter, and

"(ii) a percentage equal to 12 divided by the number of such months.

"(e) APPLICABLE INCOME.—

"(1) IN GENERAL.—For purposes of this section, the applicable income for any taxable year shall be the net amount (not less than zero) determined—

"(A) by taking into account the entity's items in the manner and with the exceptions provided in section 703(a) or 1363(b), as the case may be, and

"(B) by making the further adjustments provided in paragraphs (2), (3), (4), and (5) of this subsection.

"(2) CERTAIN DEDUCTIONS ALLOWED.—In determining applicable income, the following amounts shall be allowed as deductions:

"(A) The deduction allowable under section 170 for charitable contributions of the entity.

"(B) The deduction allowable under section 901 for taxes described in section 901(c) paid or accrued to foreign countries or possessions of the United States.

"(3) CERTAIN LIMITATIONS DISREGARDED.—For purposes of paragraphs (1) and (2), any limitation on the amount of any item which may be taken into account for purposes of computing the taxable income of a partner or shareholder shall be disregarded.

"(4) GUARANTEED PAYMENTS TO PARTNERS NOT DEDUCTED.—In determining applicable income, a guaranteed payment to a partner shall not be treated as an item of deduction.

"(5) DISPROPORTIONATE APPLICABLE PAYMENTS DURING DEFERRAL PERIOD.—

"(A) DEDUCTION NOT ALLOWED.—In determining applicable income, no deduction shall be allowed for disproportionate deferral period applicable payments.

"(B) DISPROPORTIONATE DEFERRAL PERIOD APPLICABLE PAYMENTS.—For purposes of subparagraph (A), the term 'disproportionate deferral period applicable payments' means the excess (if any) of—

"(i) the product of the deferral ratio and the aggregate applicable payments made to owners during the entity's entire taxable year, over

"(ii) the aggregate applicable payments made to owners during the deferral period.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'applicable payments' has the meaning given to such term by section 7519(d)(3), except that in the case of an S corporation only payments to 2-percent shareholders (as defined in section 1372(b)) shall be taken into account,

"(ii) the term 'deferral period' means the months in the period beginning with the first day of the entity's taxable year and ending on December 31, and

"(iii) the term 'deferral ratio' means the ratio which the number of months in the deferral period bears to the total number of months in the taxable year.

"(6) SPECIAL RULE WHERE C CORPORATION FOR BASE YEAR.—In applying the 110-percent method, if an S corporation was a C corporation for the base year, the S corporation's applicable income shall be the taxable income of the C corporation for the base year.

"(f) COORDINATION BETWEEN ENTITY AND OWNERS.—

"(1) TREATMENT OF PAYMENTS OF REQUIRED INSTALLMENTS.—

"(A) IN GENERAL.—For purposes of this title, an owner in an entity shall be treated as having paid, for the owner's first taxable year ending with or after the close of the entity's taxable year, an amount of tax imposed by section 1 equal to the owner's allocable share of the entity's payments of required installments under this section (determined without regard to excess payments described in subparagraph (C)(ii)(II) or amounts the entity is treated as paying under paragraph (2)).

"(B) COORDINATION WITH OWNER'S ESTIMATED TAX.—For purposes of section 6654, an individual shall be treated as having paid on the due date for the estimated tax installment for each quarter of the individual's taxable year described in subparagraph (A)—

"(i) except as provided in clause (ii), 25 percent of the tax deemed paid under subparagraph (A), or

"(ii) if the annualized income method was used by the entity for any quarter of the entity's taxable year described in subparagraph (A), an amount for the corresponding quarter in the individuals's taxable year equal to the portion of such tax attributable to the individual's allocable share of the entity's applicable income for the entity's quarter.

In no event shall the aggregate estimated tax payments treated as paid under this subparagraph exceed the amount of tax determined under subparagraph (A).

"(C) AMOUNTS DETERMINED ON BASIS OF RETURN.—

"(i) IN GENERAL.—The determination of the amount of tax payments under subparagraph (A) shall be made on the basis of amounts shown on the entity's return for the taxable year.

"(ii) RECONCILIATION OF DIFFERENCES.—If, as of the first April 15 more than 3 months after the close of the entity's taxable year, the aggregate amounts paid as required installments under this section are less or more than the aggregate amounts described in clause (i) shown on the entity's return of tax for the taxable year, then—

"(I) subject to paragraph (2), there is hereby imposed on the entity under chapter 1 an additional tax equal to the amount of the shortfall, the due date for which is such April 15, or

"(II) the entity shall be treated as having made a payment of tax under chapter 1 on such April 15 in an amount equal to the excess.

"(2) TREATMENT OF PAYMENTS BY OWNERS.—For purposes of subsection (b)(2)(B) and paragraph (1)(C), an entity shall be treated as paying any portion of an underpayment attributable to an owner's allocable share of applicable income at the time the tax imposed by chapter 1 on the owner with respect to such income is paid.

"(3) ALLOCABLE SHARE.—For purposes of this subsection—

"(A) IN GENERAL.—An owner's allocable share of an item for a taxable year shall be an amount which bears the same ratio to the amount of such item as the owner's applicable income for the taxable year bears to the sum of the applicable incomes of all owners. For purposes of this subparagraph, applicable income of an owner shall be determined in the same manner as subsection (e).

"(B) APPLICATION OTHER THAN ON TAXABLE YEAR BASIS.—If—

"(i) the entity elects the annualized income method for any quarter, subparagraph (A) shall be applied on a quarter-by-quarter basis, or

"(ii) there is an interim closing of the books of an entity under this title, subparagraph (A) shall be applied separately for the periods before and after the closing.

"(g) SPECIAL RULES FOR SHORT YEAR CREATED BY ELECTION.—

"(1) ADDITIONAL REQUIRED INSTALLMENT.—If, by reason of an election under this section, an entity has a taxable year of less than 12 months, the entity shall make a required installment under this section for such taxable year—

"(A) which shall be in an amount equal to the applicable rate multiplied by the lesser of—

"(i) the entity's applicable income for such taxable year as determined under subsection (e), or

"(ii) 110 percent of the entity's applicable income for the base year (as so determined but ratably reduced to reflect the period of such taxable year), and

"(B) the due date for which shall be the last day for which an election under this section could be made for the taxable year.

"(2) TREATMENT OF LOSSES.—Any net operating loss arising in the taxable year described in paragraph (1) shall be treated as arising one-third in such taxable year and each of the 2 following taxable years. This paragraph shall not apply to an entity not in existence before such taxable year unless more than one-half of the equity interests in the entity are held by persons who owned another entity carrying on the same business before such taxable year.

"(h) OTHER DEFINITIONS AND SPECIAL RULES.—For purpose of this section—

"(1) BASE YEAR.—The term 'base year' means the most recent preceding taxable year containing 12 months.

"(2) EQUITY INTEREST.—The term 'equity interest' means—

"(A) in the case of a partnership, the capital interests, and

"(B) in the case of an S corporation, the shares of stock in the corporation (whether voting or nonvoting).

"(3) OWNER.—The term 'owner' means a partner in a partnership or a shareholder in an S corporation, whichever is applicable.

"(4) COMMON CONTROL.—

"(A) IN GENERAL.—For purposes of subsections (c)(2), (c)(4)(B), and (d)(2)(B), entities under common control shall be treated as 1 entity.

"(B) COMMON CONTROL.—Entities shall be treated as under common control under subparagraph (A) if they are treated as a single employee under subsection (a) or (b) of section 52.

"(5) WAIVER.—No penalty shall be imposed under subsection (a) with respect to any underpayment to the extent the Secretary determines that by reason of casualty, disaster, or other unusual circumstances the imposition of the penalty would be against equity and good conscience."

(c) MODIFICATION OF ELECTIONS.—

(1) TIME FOR MAKING.—Paragraph (1) of section 444(d) is amended by adding at the end the following new sentence: "Such election may be made at any time on or before the 15th day of the 3d month of the first taxable year of 12 months under the election."

(2) TERMINATIONS.—Paragraph (2) of section 444(d) is amended by striking subparagraph (B) and inserting:

"(B) TERMINATIONS.—

"(i) REVOCATION.—An election under subsection (a) may be terminated by revocation but only if owners of more than one-half of the equity interests in the entity on the date of the revocation consent to it.

"(ii) ENTITY TERMINATIONS.—In the case of a partnership or S corporation, an election under subsection (a) terminates when the partnership terminates under section 708(b)(1) or the corporation ceases to be an S corporation.

"(C) SUBSEQUENT ELECTIONS.—If an election under subsection (a) has been terminated, no such election may be made with respect to such entity or any successor entity for any taxable year before its 5th taxable year beginning after the 1st taxable year for which the termination was effective, unless the Secretary consents to the election."

(d) CONFORMING AMENDMENTS.—

(1) Section 6665(b) is amended—

(A) by inserting "6654A," after "6654,", and

(B) by striking "6654 or" and inserting "6654, 6654A, or".

(2) The table of sections for part I of subchapter A of chapter 68 is amended by inserting after the item relating to section 6654 the following new item:

"Sec. 6654A. Failure by electing partnership or S corporation to pay estimated tax."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 14555. SPECIAL RULE FOR CROP INSURANCE PROCEEDS AND DISASTER PAYMENTS.

(a) IN GENERAL.—Section 451(d) of the Internal Revenue Code of 1986 (relating to special rule for crop insurance proceeds and disaster payments) is amended to read as follows:

"(d) SPECIAL RULE FOR CROP INSURANCE PROCEEDS AND DISASTER PAYMENTS.—

"(1) GENERAL RULE.—In the case of any payment described in paragraph (2), a taxpayer reporting on the cash receipts and disbursements method of accounting—

"(A) may elect to treat any such payment received in the taxable year of destruction or damage of crops as having been received in the following taxable year if the taxpayer establishes that, under the taxpayer's practice, income from such crops involved would have been reported in a following taxable year, or

"(B) may elect to treat any such payment received in a taxable year following the taxable year of the destruction or damage of crops as having been received in the taxable year of destruction or damage, if the taxpayer establishes that, under the taxpayer's practice, income from such crops involved would have been reported in the taxable year of destruction or damage.

"(2) PAYMENTS DESCRIBED.—For purposes of this subsection, a payment is described in this paragraph if such payment—

"(A) is insurance proceeds received on account of destruction or damage to crops, or

"(B) is disaster assistance received under any Federal law as a result of—

"(i) destruction or damage to crops caused by drought, flood, or other natural disaster, or

"(ii) inability to plant crops because of such a disaster.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to payments received after December 31, 1995, as a result of destruction or damage occurring after such date.

PART V—TAX-EXEMPT BOND PROVISIONS

SEC. 14561. REPEAL OF $100,000 LIMITATION ON UNSPENT PROCEEDS UNDER 1-YEAR EXCEPTION FROM REBATE.

Subclause (I) of section 148(f)(4)(B)(ii) (relating to additional period for certain bonds) is amended by striking "the lesser of 5 percent of the proceeds of the issue or $100,000" and inserting "5 percent of the proceeds of the issue".

SEC. 14562. EXCEPTION FROM REBATE FOR EARNINGS ON BONA FIDE DEBT SERVICE FUND UNDER CONSTRUCTION BOND RULES.

Subparagraph (C) of section 148(f)(4) is amended by adding at the end the following new clause:

"(xvii) TREATMENT OF BONA FIDE DEBT SERVICE FUNDS.—If the spending requirements of clause (ii) are met with respect to the available construction proceeds of a construction issue, then paragraph (2) shall not apply to earnings on a bona fide debt service fund for such issue."

SEC. 14563. REPEAL OF DEBT SERVICE-BASED LIMITATION ON INVESTMENT IN CERTAIN NONPURPOSE INVESTMENTS.

Subsection (d) of section 148 (relating to special rules for reasonably required reserve or replacement fund) is amended by striking paragraph (3).

SEC. 14564. REPEAL OF EXPIRED PROVISIONS.

(a) Paragraph (2) of section 148(c) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(b) Paragraph (4) of section 148(f) is amended by striking subparagraph (E).

SEC. 14565. EFFECTIVE DATES.

The amendments made by this part shall apply to bonds issued after the date of the enactment of this Act.

PART VI—INSURANCE PROVISIONS

SEC. 14571. TREATMENT OF CERTAIN INSURANCE CONTRACTS ON RETIRED LIVES.

(a) GENERAL RULE.—

(1) Paragraph (2) of section 817(d) (defining variable contract) is amended by striking "or" at the end of subparagraph (A), by striking "and" at the end of subparagraph (B) and inserting "or", and by inserting after subparagraph (B) the following new subparagraph:

"(C) provides for funding of insurance on retired lives as described in section 807(c)(6), and".

(2) Paragraph (3) of section 817(d) is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by inserting after subparagraph (B) the following new subparagraph:

"(C) in the case of funds held under a contract described in paragraph (2)(C), the amounts paid in, or the amounts paid out, reflect the investment return and the market value of the segregated asset account."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 14572. TREATMENT OF MODIFIED GUARANTEED CONTRACTS.

(a) GENERAL RULE.—Subpart E of part I of subchapter L of chapter 1 (relating to definitions and special rules) is amended by inserting after section 817 the following new section:

"SEC. 817A. SPECIAL RULES FOR MODIFIED GUARANTEED CONTRACTS.

"(a) COMPUTATION OF RESERVES.—In the case of a modified guaranteed contract, clause (ii) of section 807(e)(1)(A) shall not apply.

"(b) SEGREGATED ASSETS UNDER MODIFIED GUARANTEED CONTRACTS MARKED TO MARKET.—

"(1) IN GENERAL.—In the case of any life insurance company, for purposes of this subtitle—

"(A) Any gain or loss with respect to a segregated asset shall be treated as ordinary income or loss, as the case may be.

"(B) If any segregated asset is held by such company as of the close of any taxable year—

"(i) such company shall recognize gain or loss as if such asset were sold for its fair market value on the last business day of such taxable year, and

"(ii) any such gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this subparagraph at times other than the times provided in this subparagraph.

"(2) SEGREGATED ASSET.—For purposes of paragraph (1), the term 'segregated asset' means any asset held as part of a segregated account referred to in subsection (d)(1) under a modified guaranteed contract.

"(c) SPECIAL RULE IN COMPUTING LIFE INSURANCE RESERVES.—For purposes of applying section 816(b)(1)(A) to any modified guaranteed contract, an assumed rate of interest shall include a rate of interest determined, from time to time, with reference to a market rate of interest.

"(d) MODIFIED GUARANTEED CONTRACT DEFINED.—For purposes of this section, the term 'modified guaranteed contract' means a contract not described in section 817—

"(1) all or part of the amounts received under which are allocated to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company and is valued from time to time with reference to market values,

"(2) which—

"(A) provides for the payment of annuities,

"(B) is a life insurance contract, or

"(C) is a pension plan contract which is not a life, accident, or health, property, casualty, or liability contract,

"(3) for which reserves are valued at market for annual statement purposes, and

"(4) which provides for a net surrender value or a policyholder's fund (as defined in section 807(e)(1)).

If only a portion of a contract is not described in section 817, such portion shall be treated for purposes of this section as a separate contract.

"(e) REGULATIONS.—The Secretary may prescribe regulations—

"(1) to provide for the treatment of market value adjustments under sections 72, 7702, 7702A, and 807(e)(1)(B),

"(2) to determine the interest rates applicable under sections 807(c)(3), 807(d)(2)(B), and 812 with respect to a modified guaranteed contract annually, in a manner appropriate for modified guaranteed contracts and, to the extent appropriate for such a contract, to modify or waive the applicability of section 811(d),

"(3) to provide rules to limit ordinary gain or loss treatment to assets constituting reserves for modified guaranteed contracts (and not other assets) of the company,

"(4) to provide appropriate treatment of transfers of assets to and from the segregated account, and

"(5) as may be necessary or appropriate to carry out the purposes of this section."

(b) CLERICAL AMENDMENT.—The table of sections for subpart E of part I of subchapter L of chapter 1 is amended by inserting after the item relating to section 817 the following new item:

"Sec. 817A. Special rules for modified guaranteed contracts."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

(2) TREATMENT OF NET ADJUSTMENTS.—In the case of any taxpayer required by the amendments made by this section to change its calculation of reserves to take into account market value adjustments and to mark segregated assets to market for any taxable year—

(A) such changes shall be treated as a change in method of accounting initiated by the taxpayer,

(B) such changes shall be treated as made with the consent of the Secretary, and

(C) the adjustments required by reason of section 481 of the Internal Revenue Code of 1986 shall be taken into account as ordinary income or loss by the taxpayer for the taxpayer's first taxable year beginning after December 31, 1995.

SEC. 14573. MINIMUM TAX TREATMENT OF CERTAIN PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) IN GENERAL.—Clause (i) of section 56(g)(4)(B) (relating to inclusion of items included for purposes of computing earnings and profits) is amended by adding at the end the following new sentence: "In the case of any insurance company taxable under section 831(b), this clause shall not apply to any amount not described in section 834(b)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995.

PART VII—OTHER PROVISIONS

SEC. 14581. CLOSING OF PARTNERSHIP TAXABLE YEAR WITH RESPECT TO DECEASED PARTNER, ETC.

(a) GENERAL RULE.—Subparagraph (A) of section 706(c)(2) (relating to disposition of entire interest) is amended to read as follows:

"(A) DISPOSITION OF ENTIRE INTEREST.—The taxable year of a partnership shall close with respect to a partner whose entire interest in the partnership terminates (whether by reason of death, liquidation, or otherwise)."

(b) CLERICAL AMENDMENT.—The paragraph heading for paragraph (2) of section 706(c) is amended to read as follows:

"(2) TREATMENT OF DISPOSITIONS.—".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years beginning after December 31, 1995.

SEC. 14582. CREDIT FOR SOCIAL SECURITY TAXES PAID WITH RESPECT TO EMPLOYEE CASH TIPS.

(a) REPORTING REQUIREMENT NOT CONSIDERED.—Subparagraph (A) of section 45B(b)(1) (relating to excess employer social security tax) is amended by inserting "(without regard to whether such tips are reported under section 6053)" after "section 3121(q)".

(b) TAXES PAID.—Subsection (d) of section 13443 of the Revenue Reconciliation Act of 1993 is amended by inserting ", with respect to services performed before, on, or after such date" after "1993".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by, and the provisions of, section 13443 of the Revenue Reconciliation Act of 1993.

SEC. 14583. DUE DATE FOR FIRST QUARTER ESTIMATED TAX PAYMENTS BY PRIVATE FOUNDATIONS.

(a) IN GENERAL.—Paragraph (3) of section 6655(g) is amended by inserting after subparagraph (C) the following new subparagraph:

"(D) In the case of any private foundation, subsection (c)(2) shall be applied by substituting 'May 15' for 'April 15' ".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995.

SEC. 14584. TREATMENT OF DUES PAID TO AGRICULTURAL OR HORTICULTURAL ORGANIZATIONS.

(a) GENERAL RULE.—Section 512 (defining unrelated business taxable income) is amended by adding at the end thereof the following new subsection:

"(d) TREATMENT OF DUES OF AGRICULTURAL OR HORTICULTURAL ORGANIZATIONS.—

"(1) IN GENERAL.—If—

"(A) an agricultural or horticultural organization described in section 501(c)(5) requires annual dues to be paid in order to be a member of such organization, and

"(B) the amount of such required annual dues does not exceed $100,

in no event shall any portion of such dues be treated as derived by such organization from an unrelated trade or business by reason of any benefits or privileges to which members of such organization are entitled.

"(2) INDEXATION OF $100 AMOUNT.—In the case of any taxable year beginning in a calendar year after 1995, the $100 amount in paragraph (1) shall be increased by an amount equal to—

"(A) $100, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 1994' for 'calendar year 1992' in subparagraph (B) thereof.

"(3) DUES.—For purposes of this subsection, the term 'dues' includes any payment required to be made in order to be recognized by the organization as a member of the organization."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1994.

Subtitle F—Estates and Trusts

PART I—INCOME TAX PROVISIONS

SEC. 14601. CERTAIN REVOCABLE TRUSTS TREATED AS PART OF ESTATE.

(a) IN GENERAL.—Subpart A of part I of subchapter J (relating to estates, trusts, beneficiaries, and decedents) is amended by adding at the end the following new section:

"SEC. 646. CERTAIN REVOCABLE TRUSTS TREATED AS PART OF ESTATE.

"(a) GENERAL RULE.—For purposes of this subtitle, if both the executor of an estate and the trustee of a qualified revocable trust elect the treatment provided in this section, such trust shall be treated and taxed as part of such estate (and not as a separate trust) for all taxable years of the estate ending after the date of the decedent's death and before the applicable date.

"(b) DEFINITIONS.—For purposes of subsection (a)—

"(1) QUALIFIED REVOCABLE TRUST.—The term 'qualified revocable trust' means any trust all of which was treated under section 676 as owned by the decedent of the estate referred to in subsection (a).

"(2) APPLICABLE DATE.—The term 'applicable date' means—

"(A) if no return of tax imposed by chapter 11 is required to be filed, the date which is 2 years after the date of the decedent's death, and

"(B) if such a return is required to be filed, the date which is 6 months after the date of the final determination of the liability for tax imposed by chapter 11.

"(c) ELECTION.—The election under subsection (a) shall be made not later than the time prescribed for filing the return of tax imposed by this chapter for the first taxable year of the estate (determined with regard to extensions) and, once made, shall be irrevocable."

(b) COMPARABLE TREATMENT UNDER GENERATION-SKIPPING TAX.—Paragraph (1) of section 2652(b) is amended by adding at the end the following new sentence: "Such term shall not include any trust during any period the trust is treated as part of an estate under section 646."

(c) CLERICAL AMENDMENT.—The table of sections for such subpart A is amended by adding at the end the following new item:

"Sec. 646. Certain revocable trusts treated as part of estate."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to estates of decedents dying after the date of the enactment of this Act.

SEC. 14602. DISTRIBUTIONS DURING FIRST 65 DAYS OF TAXABLE YEAR OF ESTATE.

(a) IN GENERAL.—Subsection (b) of section 663 (relating to distributions in first 65 days of taxable year) is amended by inserting "an estate or" before "a trust" each place it appears.

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 663(b) is amended by striking "the fiduciary of such trust" and inserting "the executor of such estate or the fiduciary of such trust (as the case may be)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 14603. SEPARATE SHARE RULES AVAILABLE TO ESTATES.

(a) IN GENERAL.—Subsection (c) of section 663 (relating to separate shares treated as separate trusts) is amended—

(1) by inserting before the last sentence the following new sentence: "Rules similar to the rules of the preceding provisions of this subsection shall apply to treat substantially separate and independent shares of different beneficiaries in an estate having more than 1 beneficiary as separate estates.", and

(2) by inserting "or estates" after "trusts" in the last sentence.

(b) CONFORMING AMENDMENT.—The subsection heading of section 663(c) is amended by inserting "ESTATES OR" before "TRUSTS".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

SEC. 14604. EXECUTOR OF ESTATE AND BENEFICIARIES TREATED AS RELATED PERSONS FOR DISALLOWANCE OF LOSSES, ETC.

(a) DISALLOWANCE OF LOSSES.—Subsection (b) of section 267 (relating to losses, expenses, and interest with respect to transactions between related taxpayers) is amended by striking "or" at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting "; or", and by adding at the end the following new paragraph:

"(13) Except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate."

(b) ORDINARY INCOME FROM GAIN FROM SALE OF DEPRECIABLE PROPERTY.—Subsection (b) of section 1239 is amended by striking the period at the end of paragraph (2) and inserting ", and" and by adding at the end the following new paragraph:

"(3) except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 14605. LIMITATION ON TAXABLE YEAR OF ESTATES.

(a) IN GENERAL.—Section 645 (relating to taxable year of trusts) is amended to read as follows:

"SEC. 645. TAXABLE YEAR OF ESTATES AND TRUSTS.

"(a) ESTATES.—For purposes of this subtitle, the taxable year of an estate shall be a year ending on October 31, November 30, or December 31.

"(b) TRUSTS.—

"(1) IN GENERAL.—For purposes of this subtitle, the taxable year of any trust shall be the calendar year.

"(2) EXCEPTION FOR TRUSTS EXEMPT FROM TAX AND CHARITABLE TRUSTS.—Paragraph (1) shall not apply to a trust exempt from taxation under section 501(a) or to a trust described in section 4947(a)(1)."

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part I of subchapter J of chapter 1 is amended by striking the item relating to section 645 and inserting the following new item:

"Sec. 645. Taxable year of estates and trusts."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

SEC. 14606. REPEAL OF CERTAIN THROWBACK RULES APPLICABLE TO DOMESTIC TRUSTS.

(a) ACCUMULATION DISTRIBUTIONS.—

(1) IN GENERAL.—Section 665 is amended by adding at the end the following new subsection:

"(f) ACCUMULATION DISTRIBUTIONS AFTER 1995.—For purposes of this subpart, in the case of a trust other than a foreign trust, any distribution in any taxable year beginning after December 31, 1995, shall be computed without regard to any undistributed net income."

(2) CONFORMING AMENDMENT.—Subsection (b) of section 665 is amended by inserting "except as provided in subsection (f)," after "subpart,"

(b) PROPERTY TRANSFERRED TO TRUSTS.—Subsection (e) of section 644 is amended by striking "or" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting ", or ", and by adding at the end the following new paragraph:

"(5) in the case of a trust other than a foreign trust, any sale or exchange of property after December 31, 1995."

(c) EFFECTIVE DATES.—

(1) ACCUMULATION DISTRIBUTION.—The amendments made by subsection (a) shall apply to distributions in taxable years beginning after December 31, 1995.

(2) TRANSFERRED PROPERTY.—The amendments made by subsection (b) shall apply to sales or exchanges after December 31, 1995.

SEC. 14607. TREATMENT OF FUNERAL TRUSTS.

(a) IN GENERAL.—Subpart F of part I of subchapter J of chapter 1 is amended by adding at the end the following new section:

"SEC. 684. TREATMENT OF FUNERAL TRUSTS.

"(a) IN GENERAL.—In the case of a qualified funeral trust—

"(1) subparts B, C, D, and E shall not apply, and

"(2) no deduction shall be allowed by section 642(b).

"(b) QUALIFIED FUNERAL TRUST.—For purposes of this subsection, the term 'qualified funeral trust' means any trust (other than a foreign trust) if—

"(1) the trust arises as a result of a contract with a person engaged in the trade or business of providing funeral or burial services or property necessary to provide such services,

"(2) the sole purpose of the trust is to hold, invest, and reinvest funds in the trust and to use such funds solely to make payments for such services or property for the benefit of the beneficiaries of the trust,

"(3) the only beneficiaries of such trust are individuals who have entered into contracts described in paragraph (1) to have such services or property provided at their death,

"(4) the only contributions to the trust are contributions by or for the benefit of such beneficiaries,

"(5) the trustee elects the application of this subsection, and

"(6) the trust would (but for the election described in paragraph (5)) be treated as owned by the beneficiaries under subpart E.

"(c) DOLLAR LIMITATION ON CONTRIBUTIONS.—

"(1) IN GENERAL.—The term 'qualified funeral trust' shall not include any trust which accepts contributions by or for the benefit of an individual in excess of $5,000.

"(2) RELATED TRUSTS.—For purposes of paragraph (1), all trusts having trustees which are related persons shall be treated as 1 trust. For purposes of the preceding sentence, persons are related if—

"(A) the relationship between such persons would result in the disallowance of losses under section 267 or 707(b),

"(B) such persons are treated as a single employer under subsection (a) or (b) of section 52, or

"(C) the Secretary determines that treating such persons as related is necessary to prevent avoidance of the purposes of this section.

"(3) INFLATION ADJUSTMENT.—In the case of any contract referred to in subsection (b)(1) which is entered into during any calendar year after 1996, the dollar amount referred to paragraph (1) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof.

If any dollar amount after being increased under the preceding sentence is not a multiple of $100, such dollar amount shall be rounded to the nearest multiple of $100.

"(d) APPLICATION OF RATE SCHEDULE.—Section 1(e) shall be applied to each qualified funeral trust by treating each beneficiary's interest in each such trust as a separate trust.

"(e) TREATMENT OF AMOUNTS REFUNDED TO BENEFICIARY ON CANCELLATION.—No gain or loss shall be recognized to a beneficiary described in subsection (b)(3) of any qualified funeral trust by reason of any payment from such trust to such beneficiary by reason of cancellation of a contract referred to in subsection (b)(1). If any payment referred to in the preceding sentence consists of property other than money, the basis of such property in the hands of such beneficiary shall be the same as the trust's basis in such property immediately before the payment.

"(f) SIMPLIFIED REPORTING.—The Secretary may prescribe rules for simplified reporting of all trusts having a single trustee."

(b) CLERICAL AMENDMENT.—The table of sections for subpart F of part I of subchapter J of chapter 1 is amended by adding at the end the following new item:

"Sec. 684. Treatment of funeral trusts."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

PART II—ESTATE AND GIFT TAX PROVISIONS

SEC. 14611. CLARIFICATION OF WAIVER OF CERTAIN RIGHTS OF RECOVERY.

(a) AMENDMENT TO SECTION 2207A.—Paragraph (2) of section 2207A(a) (relating to right of recovery in the case of certain marital deduction property) is amended to read as follows:

"(2) DECEDENT MAY OTHERWISE DIRECT.—Paragraph (1) shall not apply with respect to any property to the extent that the decedent in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property."

(b) AMENDMENT TO SECTION 2207B.—Paragraph (2) of section 2207B(a) (relating to right of recovery where decedent retained interest) is amended to read as follows:

"(2) DECEDENT MAY OTHERWISE DIRECT.—Paragraph (1) shall not apply with respect to any property to the extent that the decedent in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to the estates of decedents dying after the date of the enactment of this Act.

SEC. 14612. ADJUSTMENTS FOR GIFTS WITHIN 3 YEARS OF DECEDENT'S DEATH.

(a) GENERAL RULE.—Section 2035 is amended to read as follows:

"SEC. 2035. ADJUSTMENTS FOR CERTAIN GIFTS MADE WITHIN 3 YEARS OF DECEDENT'S DEATH.

"(a) INCLUSION OF CERTAIN PROPERTY IN GROSS ESTATE.—If—

"(1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and

"(2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under section 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death,

the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

"(b) INCLUSION OF GIFT TAX ON GIFTS MADE DURING 3 YEARS BEFORE DECEDENT'S DEATH.—The amount of the gross estate (determined without regard to this subsection) shall be increased by the amount of any tax paid under chapter 12 by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent's death.

"(c) OTHER RULES RELATING TO TRANSFERS WITHIN 3 YEARS OF DEATH.—

"(1) IN GENERAL.—For purposes of—

"(A) section 303(b) (relating to distributions in redemption of stock to pay death taxes),

"(B) section 2032A (relating to special valuation of certain farms, etc., real property), and

"(C) subchapter C of chapter 64 (relating to lien for taxes),

the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, during the 3-year period ending on the date of the decedent's death.

"(2) COORDINATION WITH SECTION 6166.—An estate shall be treated as meeting the 35 percent of adjusted gross estate requirement of section 6166(a)(1) only if the estate meets such requirement both with and without the application of paragraph (1).

"(3) MARITAL AND SMALL TRANSFERS.—Paragraph (1) shall not apply to any transfer (other than a transfer with respect to a life insurance policy) made during a calendar year to any donee if the decedent was not required by section 6019 (other than by reason of section 6019(2)) to file any gift tax return for such year with respect to transfers to such donee.

"(d) EXCEPTION.—Subsection (a) shall not apply to any bona fide sale for an adequate and full consideration in money or money's worth.

"(e) TREATMENT OF CERTAIN TRANSFERS FROM REVOCABLE TRUSTS.—For purposes of this section and section 2038, any transfer from any portion of a trust during any period that such portion was treated under section 676 as owned by the decedent shall be treated as a transfer made directly by the decedent."

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter A of chapter 11 is amended by striking "gifts" in the item relating to section 2035 and inserting "certain gifts".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying after the date of the enactment of this Act.

SEC. 14613. CLARIFICATION OF QUALIFIED TERMINABLE INTEREST RULES.

(a) GENERAL RULE.—

(1) ESTATE TAX.—Subparagraph (B) of section 2056(b)(7) (defining qualified terminable interest property) is amended by adding at the end the following new clause:

"(vi) TREATMENT OF CERTAIN INCOME DISTRIBUTIONS.—An income interest shall not fail to qualify as a qualified income interest for life solely because income for the period after the last distribution date and on or before the date of the surviving spouse's death is not required to be distributed to the surviving spouse or to the estate of the surviving spouse."

(2) GIFT TAX.—Paragraph (3) of section 2523(f) is amended by striking "and (iv)" and inserting "(iv), and (vi)".

(b) CLARIFICATION OF SUBSEQUENT INCLUSIONS.—Section 2044 is amended by adding at the end the following new subsection:

"(d) CLARIFICATION OF INCLUSION OF CERTAIN INCOME.—The amount included in the gross estate under subsection (a) shall include the amount of any income from the property to which this section applies for the period after the last distribution date and on or before the date of the decedent's death if such income is not otherwise included in the decedent's gross estate."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to the estates of decedents dying, and gifts made, after the date of the enactment of this Act.

(2) APPLICATION OF SECTION 2044 TO TRANSFERS BEFORE DATE OF ENACTMENT.—In the case of the estate of any decedent dying after the date of the enactment of this Act, if there was a transfer of property on or before such date—

(A) such property shall not be included in the gross estate of the decedent under section 2044 of the Internal Revenue Code of 1986 if no prior marital deduction was allowed with respect to such a transfer of such property to the decedent, but

(B) such property shall be so included if such a deduction was allowed.

SEC. 14614. TRANSITIONAL RULE UNDER SECTION 2056A.

(a) GENERAL RULE.—In the case of any trust created under an instrument executed before the date of the enactment of the Revenue Reconciliation Act of 1990, such trust shall be treated as meeting the requirements of paragraph (1) of section 2056A(a) of the Internal Revenue Code of 1986 if the trust instrument requires that all trustees of the trust be individual citizens of the United States or domestic corporations.

(b) EFFECTIVE DATE.—The provisions of subsection (a) shall take effect as if included in the provisions of section 11702(g) of the Revenue Reconciliation Act of 1990.

SEC. 14615. OPPORTUNITY TO CORRECT CERTAIN FAILURES UNDER SECTION 2032A.

(a) GENERAL RULE.—Paragraph (3) of section 2032A(d) (relating to modification of election and agreement to be permitted) is amended to read as follows:

"(3) MODIFICATION OF ELECTION AND AGREEMENT TO BE PERMITTED.—The Secretary shall prescribe procedures which provide that in any case in which the executor makes an election under paragraph (1) (and submits the agreement referred to in paragraph (2)) within the time prescribed therefor, but—

"(A) the notice of election, as filed, does not contain all required information, or

"(B) signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the agreement does not contain all required information,

the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or signatures."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to the estates of decedents dying after the date of the enactment of this Act.

SEC. 14616. UNIFIED CREDIT OF DECEDENT INCREASED BY UNIFIED CREDIT OF SPOUSE USED ON SPLIT GIFT INCLUDED IN DECEDENT'S GROSS ESTATE.

(a) IN GENERAL.—Section 2010 (relating to unified credit against estate tax) is amended by adding at the end the following new subsection:

"(d) TREATMENT OF UNIFIED CREDIT USED BY SPOUSE ON SPLIT-GIFT INCLUDED IN DECEDENT'S GROSS ESTATE.—If—

"(1) the decedent was the donor of any gift one-half of which was considered under section 2513 as made by the decedent's spouse, and

"(2) the amount of such gift is includible in the gross estate of the decedent by reason of section 2035, 2036, 2037, or 2038,

the amount of the credit allowable by subsection (a) to the estate of the decedent shall be increased by the amount of the unified credit allowed against the tax imposed by section 2501 on the amount of such gift considered under section 2513 as made by such spouse."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to gifts made after the date of the enactment of this Act.

SEC. 14617. REFORMATION OF DEFECTIVE BEQUESTS, ETC. TO SPOUSE OF DECEDENT.

(a) IN GENERAL.—Subsection (b) of section 2056 (relating to bequests, etc., to surviving spouse) is amended by adding at the end the following new paragraph:

"(11) REFORMATIONS PERMITTED.—

"(A) IN GENERAL.—In the case of any interest in property with respect to which a deduction would be allowable under subsection (a) but for a provision of this subsection, if—

"(i) the surviving spouse is entitled to all of the income from the property for life,

"(ii) no person other than such spouse is entitled to any distribution of such property during such spouse's life, and "(iii) there is a change of a governing instrument (by reformation, amendment, construction, or otherwise) as of the applicable date which results in the satisfaction of the requirements of such provision as of the date of the decedent's death,

the determination of whether such deduction is allowable shall be made as of the applicable date.

"(B) SPECIAL RULE WHERE TIMELY COMMENCEMENT OF REFORMATION.—Clauses (i) and (ii) of subparagraph (A) shall not apply to any interest if, not later than the date described in subparagraph (C)(i), a judicial proceeding is commenced to change such interest into an interest which satisfies the requirements of the provision by reason of which (but for this paragraph) a deduction would not be allowable under subsection (a) for such interest.

"(C) APPLICABLE DATE.—For purposes of subparagraph (A), the term 'applicable date' means—

"(i) the last date (including extensions) for filing the return of tax imposed by this chapter, or

"(ii) if a judicial proceeding is commenced to comply with such provision, the time when the changes pursuant to such proceeding are made.

"(D) SPECIAL RULE.—If the change referred to in subparagraph (A)(iii) is to qualify the passage of the interest under paragraph (7), subparagraph (A) shall apply only if the election under subparagraph (B) thereof is made.

"(E) STATUTE OF LIMITATIONS.—If a judicial proceeding described in subparagraph (C)(ii) is commenced with respect to any interest, the period for assessing any deficiency of tax attributable to such interest shall not expire before the date 1 year after the date on which the Secretary is notified that such provision has been complied with or that such proceeding has been terminated."

(b) COMPARABLE RULE FOR GIFT TAX.—Section 2523 (relating to gift to spouse) is amended by adding at the end the following new subsection:

"(j) REFORMATIONS PERMITTED.—Rules similar to the rules of section 2056(b)(11) shall apply for purposes of this section."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying, and gifts made, after the date of the enactment of this Act.

SEC. 14618. GIFTS MAY NOT BE REVALUED FOR ESTATE TAX PURPOSES AFTER EXPIRATION OF STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Section 2001 (relating to imposition and rate of estate tax) is amended by adding at the end the following new subsection:

"(f) VALUATION OF GIFTS.—If—

"(1) the time has expired within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)), and

"(2) the value of such gift is shown on the return for such preceding calendar period or is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such gift,

the value of such gift shall, for purposes of computing the tax under this chapter, be the value of such gift as finally determined for purposes of chapter 12."

(b) MODIFICATION OF APPLICATION OF STATUTE OF LIMITATIONS.—Paragraph (9) of section 6501(c) is amended to read as follows:

"(9) GIFT TAX ON CERTAIN GIFTS NOT SHOWN ON RETURN.—If any gift of property the value of which (or any increase in taxable gifts required under section 2701(d)) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item which is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item. The value of any item which is so disclosed may not be redetermined by the Secretary after the expiration of the period under subsection (a)."

(c) DECLARATORY JUDGMENT PROCEDURE FOR DETERMINING VALUE OF GIFT.—

(1) IN GENERAL.—Part IV of subchapter C of chapter 76 is amended by inserting after section 7476 the following new section:

"SEC. 7477. DECLARATORY JUDGMENTS RELATING TO VALUE OF CERTAIN GIFTS.

"(a) CREATION OF REMEDY.—In a case of an actual controversy involving a determination by the Secretary of the value of any gift shown on the return of tax imposed by chapter 12 or disclosed on such return or in any statement attached to such return, upon the filing of an appropriate pleading, the Tax Court may make a declaration of the value of such gift. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

"(b) LIMITATIONS.—

"(1) PETITIONER.—A pleading may be filed under this section only by the donor.

"(2) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—The court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted all available administrative remedies within the Internal Revenue Service.

"(3) TIME FOR BRINGING ACTION.—If the Secretary sends by certified or registered mail notice of his determination as described in subsection (a) to the petitioner, no proceeding may be initiated under this section unless the pleading is filed before the 91st day after the date of such mailing."

(2) CLERICAL AMENDMENT.—The table of sections for such part IV is amended by inserting after the item relating to section 7476 the following new item:

"Sec. 7477. Declaratory judgments relating to value of certain gifts."

(d) CONFORMING AMENDMENT.—Subsection (c) of section 2504 is amended by striking ", and if a tax under this chapter or under corresponding provisions of prior laws has been assessed or paid for such preceding calendar period".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a) and (c) shall apply to gifts made after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to gifts made in calendar years ending after the date of the enactment of this Act.

SEC. 14619. CLARIFICATIONS RELATING TO DISCLAIMERS.

(a) PARTIAL TRANSFER-TYPE DISCLAIMERS PERMITTED.—Paragraph (3) of section 2518(c) (relating to certain transfers treated as disclaimers) is amended by inserting "(or an undivided portion of such interest)" after "entire interest in the property".

(b) RETENTION OF INTEREST BY DECEDENT'S SPOUSE PERMITTED IN TRANSFER-TYPE DISCLAIMERS.—Paragraph (3) of section 2518(c) is amended by adding at the end the following new flush sentence:

"For purposes of the preceding sentence, a written transfer by the spouse of the decedent of property to a trust shall not fail to be treated as a transfer of such spouse's interest in such property by reason of such spouse having an interest in such trust."

(c) DISCLAIMERS ARE EFFECTIVE FOR INCOME TAX PURPOSES.—Subsection (a) of section 2518 is amended by inserting "and subtitle A" after "this subtitle" each place it appears.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers creating an interest in the person disclaiming, and disclaimers, made after the date of the enactment of this Act.

SEC. 14620. CLARIFICATION OF TREATMENT OF SURVIVOR ANNUITIES UNDER QUALIFIED TERMINABLE INTEREST RULES.

(a) IN GENERAL.—Subparagraph (C) of section 2056(b)(7) is amended by inserting "(or, in the case of an interest in an annuity arising under the community property laws of a State, included in the gross estate of the decedent under section 2033)" after "section 2039".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

SEC. 14621. TREATMENT UNDER QUALIFIED DOMESTIC TRUST RULES OF FORMS OF OWNERSHIP WHICH ARE NOT TRUSTS.

(a) IN GENERAL.—Subsection (c) of section 2056A (defining qualified domestic trust) is amended by adding at the end the following new paragraph:

"(3) TRUST.—To the extent provided in regulations prescribed by the Secretary, the term 'trust' includes other arrangements which have substantially the same effect as a trust."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

SEC. 14622. AUTHORITY TO WAIVE REQUIREMENT OF UNITED STATES TRUSTEE FOR QUALIFIED DOMESTIC TRUSTS.

(a) IN GENERAL.—Subparagraph (A) of section 2056A(a)(1) is amended by inserting "except as provided in regulations prescribed by the Secretary," before "requires".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

PART III—GENERATION-SKIPPING TAX PROVISIONS

SEC. 14631. SEVERING OF TRUSTS HOLDING PROPERTY HAVING AN INCLUSION RATIO OF GREATER THAN ZERO.

(a) IN GENERAL.—Subsection (a) of section 2642 (relating to inclusion ratio) is amended by adding at the end the following new paragraph:

"(3) SEVERING OF TRUSTS HOLDING PROPERTY HAVING AN INCLUSION RATIO OF GREATER THAN ZERO.—

"(A) IN GENERAL.—If a trust holding property having an inclusion ratio of greater than zero is severed in a qualified severance, at the election of the trustee of such trust, the trusts resulting from such severance shall be treated as separate trusts for purposes of this chapter.

"(B) QUALIFIED SEVERANCE.—For purposes of subparagraph (A), the term 'qualified severance' means the creation of 2 trusts from a single trust if each property held by the single trust was divided between the 2 created trusts such that one trust received an interest in each such property equal to the applicable fraction of the single trust. Such term includes any other severance permitted under regulations prescribed by the Secretary.

"(C) ELECTION.—The election under this paragraph shall be made at the time prescribed by the Secretary. Such an election, once made, shall be irrevocable."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to severances after the date of the enactment of this Act.

SEC. 14632. CLARIFICATION OF WHO IS TRANSFEROR WHERE SUBSEQUENT GIFT BY REASON OF POWER OF APPOINTMENT.

(a) IN GENERAL.—Paragraph (1) of section 2652(a) (defining transferor) is amended by adding at the end the following new sentence: "A transferor described in subparagraph (A) shall not be treated as the transferor of any property if another individual is treated as the transferor of such property under subparagraph (B) by reason of the exercise, release, or lapse of a general power of appointment with respect to such property."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to the exercise, release, or lapse of a general power of appointment after the date of the enactment of this Act.

SEC. 14633. TAXABLE TERMINATION NOT TO INCLUDE DIRECT SKIPS.

(a) IN GENERAL.—Paragraph (1) of section 2612(a) (defining taxable termination) is amended by adding at the end the following new flush sentence:

"Such term shall not include a direct skip."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to generation-skipping transfers (as defined in section 2611 of the Internal Revenue Code of 1986) after the date of the enactment of this Act.

SEC. 14634. EXPANSION OF EXCEPTION FROM GENERATION-SKIPPING TRANSFER TAX FOR TRANSFERS TO INDIVIDUALS WITH DECEASED PARENTS.

(a) IN GENERAL.—Section 2651 (relating to generation assignment) is amended by redesignating subsection (e) as subsection (f), and by inserting after subsection (d) the following new subsection:

"(e) SPECIAL RULE FOR PERSONS WITH A DECEASED PARENT.—

"(1) IN GENERAL.—For purposes of determining whether any transfer is a generation-skipping transfer, if—

"(A) an individual is a descendant of a parent of the transferor (or the transferor's spouse or former spouse), and

"(B) such individual's parent who is a lineal descendant of the parent of the transferor (or the transferor's spouse or former spouse) is dead at the time the transfer (from which an interest of such individual is established or derived) is subject to a tax imposed by chapter 11 or 12 upon the transferor (and if there shall be more than 1 such time, then at the earliest such time), such individual shall be treated as if such individual were a member of the generation which is 1 generation below the lower of the transferor's generation or the generation assignment of the youngest living ancestor of such individual who is also a descendant of the parent of the transferor (or the transferor's spouse or former spouse), and the generation assignment of any descendant of such individual shall be adjusted accordingly.

"(2) LIMITED APPLICATION OF SUBSECTION TO COLLATERAL HEIRS.—This subsection shall not apply with respect to a transfer to any individual who is not a lineal descendant of the transferor (or the transferor's spouse or former spouse) if, at the time of the transfer, such transferor has any living lineal descendant."

(b) CONFORMING AMENDMENTS.—

(1) Section 2612(c) (defining direct skip) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(2) Section 2612(c)(2) (as so redesignated) is amended by striking "section 2651(e)(2)" and inserting "section 2651(f)(2)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to terminations, distributions, and transfers occurring after the date of the enactment of this Act.

Subtitle G—Excise Tax Simplification

PART I—PROVISIONS RELATED TO DISTILLED SPIRITS, WINES, AND BEER

SEC. 14701. CREDIT OR REFUND FOR IMPORTED BOTTLED DISTILLED SPIRITS RETURNED TO DISTILLED SPIRITS PLANT.

(a) IN GENERAL.—Paragraph (1) of section 5008(c) (relating to distilled spirits returned to bonded premises) is amended by striking "withdrawn from bonded premises on payment or determination of tax" and inserting "on which tax has been determined or paid".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

SEC. 14702. AUTHORITY TO CANCEL OR CREDIT EXPORT BONDS WITHOUT SUBMISSION OF RECORDS.

(a) IN GENERAL.—Subsection (c) of section 5175 (relating to export bonds) is amended by striking "on the submission of" and all that follows and inserting "if there is such proof of exportation as the Secretary may by regulations require."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

SEC. 14703. REPEAL OF REQUIRED MAINTENANCE OF RECORDS ON PREMISES OF DISTILLED SPIRITS PLANT.

(a) IN GENERAL.—Subsection (c) of section 5207 (relating to records and reports) is amended by striking "shall be kept on the premises where the operations covered by the record are carried on and".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

SEC. 14704. FERMENTED MATERIAL FROM ANY BREWERY MAY BE RECEIVED AT A DISTILLED SPIRITS PLANT.

(a) IN GENERAL.—Paragraph (2) of section 5222(b) (relating to production, receipt, removal, and use of distilling materials) is amended to read as follows:

"(2) beer conveyed without payment of tax from brewery premises, beer which has been lawfully removed from brewery premises upon determination of tax, or".

(b) CLARIFICATION OF AUTHORITY TO PERMIT REMOVAL OF BEER WITHOUT PAYMENT OF TAX FOR USE AS DISTILLING MATERIAL.—Section 5053 (relating to exemptions) is amended by redesignating subsection (f) as subsection (i) and by inserting after subsection (e) the following new subsection:

"(f) REMOVAL FOR USE AS DISTILLING MATERIAL.—Subject to such regulations as the Secretary may prescribe, beer may be removed from a brewery without payment of tax to any distilled spirits plant for use as distilling material."

(c) CLARIFICATION OF REFUND AND CREDIT OF TAX.—Section 5056 (relating to refund and credit of tax, or relief from liability) is amended—

(1) by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) BEER RECEIVED AT A DISTILLED SPIRITS PLANT.—Any tax paid by any brewer on beer produced in the United States may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, under regulations as the Secretary may prescribe, if such beer is received on the bonded premises of a distilled spirits plant pursuant to the provisions of section 5222(b)(2), for use in the production of distilled spirits.", and

(2) by striking "or rendering unmerchantable" in subsection (d) (as so redesignated) and inserting "rendering unmerchantable, or receipt on the bonded premises of a distilled spirits plant".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

SEC. 14705. REPEAL OF REQUIREMENT FOR WHOLESALE DEALERS IN LIQUORS TO POST SIGN.

(a) IN GENERAL.—Section 5115 (relating to sign required on premises) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 5681 is amended by striking ", and every wholesale dealer in liquors," and by striking "section 5115(a) or".

(2) Subsection (c) of section 5681 is amended—

(A) by striking "or wholesale liquor establishment, on which no sign required by section 5115(a) or" and inserting "on which no sign required by", and

(B) by striking "or wholesale liquor establishment, or who" and inserting "or who".

(3) The table of sections for subpart D of part II of subchapter A of chapter 51 is amended by striking the item relating to section 5115.

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

SEC. 14706. REFUND OF TAX ON WINE RETURNED TO BOND NOT LIMITED TO UNMERCHANTABLE WINE.

(a) IN GENERAL.—Subsection (a) of section 5044 (relating to refund of tax on unmerchantable wine) is amended by striking "as unmerchantable".

(b) CONFORMING AMENDMENTS.—

(1) Section 5361 is amended by striking "unmerchantable".

(2) The section heading for section 5044 is amended by striking "unmerchantable".

(3) The item relating to section 5044 in the table of sections for subpart C of part I of subchapter A of chapter 51 is amended by striking "unmerchantable".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

SEC. 14707. USE OF ADDITIONAL AMELIORATING MATERIAL IN CERTAIN WINES.

(a) IN GENERAL.—Subparagraph (D) of section 5384(b)(2) (relating to ameliorated fruit and berry wines) is amended by striking "loganberries, currants, or gooseberries," and inserting "any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry)".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

SEC. 14708. DOMESTICALLY PRODUCED BEER MAY BE WITHDRAWN FREE OF TAX FOR USE OF FOREIGN EMBASSIES, LEGATIONS, ETC.

(a) IN GENERAL.—Section 5053 (relating to exemptions) is amended by inserting after subsection (f) the following new subsection:

"(g) REMOVALS FOR USE OF FOREIGN EMBASSIES, LEGATIONS, ETC.—

"(1) IN GENERAL.—Subject to such regulations as the Secretary may prescribe—

"(A) beer may be withdrawn from the brewery without payment of tax for transfer to any customs bonded warehouse for entry pending withdrawal therefrom as provided in subparagraph (B), and

"(B) beer entered into any customs bonded warehouse under subparagraph (A) may be withdrawn for consumption in the United States by, and for the official and family use of, such foreign governments, organizations, and individuals as are entitled to withdraw imported beer from such warehouses free of tax.

Beer transferred to any customs bonded warehouse under subparagraph (A) shall be entered, stored, and accounted for in such warehouse under such regulations and bonds as the Secretary may prescribe, and may be withdrawn therefrom by such governments, organizations, and individuals free of tax under the same conditions and procedures as imported beer.

"(2) OTHER RULES TO APPLY.—Rules similar to the rules of paragraphs (2) and (3) of section 5362(e) of such section shall apply for purposes of this subsection."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

SEC. 14709. BEER MAY BE WITHDRAWN FREE OF TAX FOR DESTRUCTION.

(a) IN GENERAL.—Section 5053 is amended by inserting after subsection (g) the following new subsection:

"(h) REMOVALS FOR DESTRUCTION.—Subject to such regulations as the Secretary may prescribe, beer may be removed from the brewery without payment of tax for destruction."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

SEC. 14710. AUTHORITY TO ALLOW DRAWBACK ON EXPORTED BEER WITHOUT SUBMISSION OF RECORDS.

(a) IN GENERAL.—The first sentence of section 5055 (relating to drawback of tax on beer) is amended by striking "found to have been paid" and all that follows and inserting "paid on such beer if there is such proof of exportation as the Secretary may by regulations require."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

SEC. 14711. TRANSFER TO BREWERY OF BEER IMPORTED IN BULK WITHOUT PAYMENT OF TAX.

(a) IN GENERAL.—Part II of subchapter G of chapter 51 is amended by adding at the end the following new section:

"SEC. 5418. BEER IMPORTED IN BULK.

"Beer imported or brought into the United States in bulk containers may, under such regulations as the Secretary may prescribe, be withdrawn from customs custody and transferred in such bulk containers to the premises of a brewery without payment of the internal revenue tax imposed on such beer. The proprietor of a brewery to which such beer is transferred shall become liable for the tax on the beer withdrawn from customs custody under this section upon release of the beer from customs custody, and the importer, or the person bringing such beer into the United States, shall thereupon be relieved of the liability for such tax."

(b) CLERICAL AMENDMENT.—The table of sections for such part II is amended by adding at the end the following new item:

"Sec. 5418. Beer imported in bulk."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

PART II—CONSOLIDATION OF TAXES ON AVIATION GASOLINE

SEC. 14721. CONSOLIDATION OF TAXES ON AVIATION GASOLINE.

(a) IN GENERAL.—Subparagraph (A) of section 4081(a)(2) (relating to imposition of tax on gasoline and diesel fuel) is amended by redesignating clause (ii) as clause (iii) and by striking clause (i) and inserting the following:

"(i) in the case of gasoline other than aviation gasoline, 18.3 cents per gallon,

"(ii) in the case of aviation gasoline, 19.3 cents per gallon, and".

(b) TERMINATION.—Subsection (d) of section 4081 is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) AVIATION GASOLINE.—On and after January 1, 1996, the rate specified in subsection (a)(2)(A)(ii) shall be 4.3 cents per gallon."

(c) REPEAL OF RETAIL LEVEL TAX.—

(1) Subsection (c) of section 4041 is amended by striking paragraphs (2) and (3) and by redesignating paragraphs (4) and (5) as paragraphs (2) and (3), respectively.

(2) Paragraph (3) of section 4041(c), as redesignated by paragraph (1), is amended by striking "paragraphs (1) and (2)" and inserting "paragraph (1)".

(d) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 4041(k) is amended by adding "and" at the end of subparagraph (A), by striking ", and" at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(2) Paragraph (1) of section 4081(d) is amended by striking "each rate of tax specified in subsection (a)(2)(A)" and inserting "the rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A)".

(3) Sections 6421(f)(2)(A) and 9502(f)(1)(A) are each amended by striking "section 4041(c)(4)" and inserting "section 4041(c)(2)".

(4) Paragraph (2) of section 9502(b) is amended by striking "14 cents" and inserting "15 cents".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996.

(f) FLOOR STOCKS TAX.—

(1) IMPOSITION OF TAX.—In the case of aviation gasoline on which tax was imposed under section 4081 of the Internal Revenue Code of 1986 before January 1, 1996, and which is held on such date by any person, there is hereby imposed a floor stocks tax of 1 cent per gallon of such gasoline.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding aviation gasoline on January 1, 1996, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before June 30, 1996.

(3) DEFINITIONS.—For purposes of this subsection:

(A) HELD BY A PERSON.—Gasoline shall be considered as "held by a person" if title thereto has passed to such person (whether or not delivery to the person has been made).

(B) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to gasoline held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 of such Code is allowable for such use.

(5) EXCEPTION FOR FUEL HELD IN AIRCRAFT TANK.—No tax shall be imposed by paragraph (1) on aviation gasoline held in the tank of an aircraft.

(6) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on aviation gasoline held on January 1, 1996, by any person if the aggregate amount of aviation gasoline held by such person on such date does not exceed 6,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (4) or (5).

(C) CONTROLLED GROUPS.—

(i) CORPORATIONS.—In the case of a controlled group, the 6,000 gallon amount in subparagraph (A) shall be apportioned among the component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in such subsection.

(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group under common control where 1 or more of the members is not a corporation.

(7) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081.

PART III—OTHER EXCISE TAX PROVISIONS

SEC. 14731. AUTHORITY TO GRANT EXEMPTIONS FROM REGISTRATION REQUIREMENTS.

(a) IN GENERAL.—The first sentence of section 4222 (relating to registration) is amended to read as follows: "Except as provided in subsection (b), section 4221 shall not apply with respect to the sale of any article by or to any person who is required by the Secretary to be registered under this section and who is not so registered."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales after the 180th day after the date of the enactment of this Act.

SEC. 14732. CERTAIN COMBINATIONS NOT TREATED AS MANUFACTURE UNDER RETAIL SALES TAX ON HEAVY TRUCKS.

(a) IN GENERAL.—Paragraph (2) of section 4052(c) (relating to certain combinations not treated as manufacture) is amended by striking "or wood or metal floor" and inserting "wood or metal floor, or a power take-off and dump body".

(b) REMOVAL OF FIFTH WHEEL.—Paragraph (1) of section 4052(c) is amended by inserting before the period "or the removal of any coupling device (including any fifth wheel)".

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

SEC. 14733. EXEMPTION FROM DIESEL FUEL DYEING REQUIREMENTS WITH RESPECT TO CERTAIN STATES.

(a) IN GENERAL.—Section 4082 (relating to exemptions for diesel fuel) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) EXCEPTION TO DYEING REQUIREMENTS.—Paragraph (2) of subsection (a) shall not apply with respect to any diesel fuel—

"(1) removed, entered, or sold in a State for ultimate sale or use in an area of such State which is exempted from the fuel dyeing requirements under subsection (i) of section 211 of the Clean Air Act (as in effect on the date of the enactment of this subsection) by the Administrator of the Environmental Protection Agency under paragraph (4) of such subsection, and

"(2) the use of which is certified pursuant to regulations issued by the Secretary."

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first calendar quarter beginning after the date of the enactment of this Act.

SEC. 14734. REPEAL OF EXPIRED PROVISIONS.

(a) PIGGY-BACK TRAILERS.—Section 4051 is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(b) DEEP SEABED MINING.—

(1) Subchapter F of chapter 36 (relating to tax on removal of hard mineral resources from deep seabed) is hereby repealed.

(2) The table of subchapters for chapter 36 is amended by striking the item relating to subchapter F.

Subtitle H—Administrative Provisions

PART I—GENERAL PROVISIONS

SEC. 14801. REPEAL OF AUTHORITY TO DISCLOSE WHETHER PROSPECTIVE JUROR HAS BEEN AUDITED.

(a) IN GENERAL.—Subsection (h) of section 6103 (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended by striking paragraph (5) and by redesignating paragraph (6) as paragraph (5).

(b) CONFORMING AMENDMENT.—Paragraph (4) of section 6103(p) is amended by striking "(h)(6)" each place it appears and inserting "(h)(5)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to judicial proceedings pending on, or commenced after, the date of the enactment of this Act.

SEC. 14802. CLARIFICATION OF STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Subsection (a) of section 6501 (relating to limitations on assessment and collection) is amended by adding at the end the following new sentence: "For purposes of this chapter, the term 'return' means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 14803. CERTAIN NOTICES DISREGARDED UNDER PROVISION INCREASING INTEREST RATE ON LARGE CORPORATE UNDERPAYMENTS.

(a) GENERAL RULE.—Subparagraph (B) of section 6621(c)(2) (defining applicable date) is amended by adding at the end the following new clause:

"(iii) EXCEPTION FOR LETTERS OR NOTICES INVOLVING SMALL AMOUNTS.—For purposes of this paragraph, any letter or notice shall be disregarded if the amount of the deficiency or proposed deficiency (or the assessment or proposed assessment) set forth in such letter or notice is not greater than $100,000 (determined by not taking into account any interest, penalties, or additions to tax)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of determining interest for periods after December 31, 1995.

SEC. 14804. CLARIFICATION OF AUTHORITY TO WITHHOLD PUERTO RICO INCOME TAXES FROM SALARIES OF FEDERAL EMPLOYEES.

(a) IN GENERAL.—Subsection (c) of section 5517 of title 5, United States Code, is amended by striking "or territory or possession" and inserting ", territory, possession, or commonwealth".

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

PART II—TAX COURT PROCEDURES

SEC. 14811. OVERPAYMENT DETERMINATIONS OF TAX COURT.

(a) APPEAL OF ORDER.—Paragraph (2) of section 6512(b) (relating to jurisdiction to enforce) is amended by adding at the end the following new sentence: "An order of the Tax Court disposing of a motion under this paragraph shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order."

(b) DENIAL OF JURISDICTION REGARDING CERTAIN CREDITS AND REDUCTIONS.—Subsection (b) of section 6512 (relating to overpayment determined by Tax Court) is amended by adding at the end the following new paragraph:

"(4) DENIAL OF JURISDICTION REGARDING CERTAIN CREDITS AND REDUCTIONS.—The Tax Court shall have no jurisdiction under this subsection to restrain or review any credit or reduction made by the Secretary under section 6402."

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

SEC. 14812. AWARDING OF ADMINISTRATIVE COSTS.

(a) RIGHT TO APPEAL TAX COURT DECISION.—Subsection (f) of section 7430 (relating to right of appeal) is amended by adding at the end the following new paragraph:

"(3) APPEAL OF TAX COURT DECISION.—An order of the Tax Court disposing of a petition under paragraph (2) shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order."

(b) PERIOD FOR APPLYING TO IRS FOR COSTS.—Subsection (b) of section 7430 (relating to limitations) is amended by adding at the end the following new paragraph:

"(5) PERIOD FOR APPLYING TO IRS FOR ADMINISTRATIVE COSTS.—An award may be made under subsection (a) by the Internal Revenue Service for reasonable administrative costs only if the prevailing party files an application with the Internal Revenue Service for such costs before the 91st day after the date on which the final decision of the Internal Revenue Service as to the determination of the tax, interest, or penalty is mailed to such party."

(c) PERIOD FOR PETITIONING OF TAX COURT FOR REVIEW OF DENIAL OF COSTS.—Paragraph (2) of section 7430(f) (relating to right of appeal) is amended—

(1) by striking "appeal to" and inserting "the filing of a petition for review with", and

(2) by adding at the end the following new sentence: "If the Secretary sends by certified or registered mail a notice of such decision to the petitioner, no proceeding in the Tax Court may be initiated under this paragraph unless such petition is filed before the 91st day after the date of such mailing."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to civil actions or proceedings commenced after the date of the enactment of this Act.

SEC. 14813. REDETERMINATION OF INTEREST PURSUANT TO MOTION.

(a) IN GENERAL.—Paragraph (3) of section 7481(c) (relating to jurisdiction over interest determinations) is amended by striking "petition" and inserting "motion".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 14814. APPLICATION OF NET WORTH REQUIREMENT FOR AWARDS OF LITIGATION COSTS.

(a) IN GENERAL.—Paragraph (4) of section 7430(c) (defining prevailing party) is amended by adding at the end the following new subparagraph:

"(C) SPECIAL RULES FOR APPLYING NET WORTH REQUIREMENT.—In applying the requirements of section 2412(d)(2)(B) of title 28, United States Code, for purposes of subparagraph (A)(iii) of this paragraph—

"(i) the net worth limitation in clause (i) of such section shall apply to—

"(I) an estate but shall be determined as of the date of the decedent's death, and

"(II) a trust but shall be determined as of the last day of the taxable year involved in the proceeding, and

"(ii) individuals filing a joint return shall be treated as 1 individual for purposes of clause (i) of such section, except in the case of a spouse relieved of liability under section 6013(e)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to proceedings commenced after the date of the enactment of this Act.

PART III—AUTHORITY FOR CERTAIN COOPERATIVE AGREEMENTS

SEC. 14821. COOPERATIVE AGREEMENTS WITH STATE TAX AUTHORITIES.

(a) GENERAL RULE.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

"SEC. 7524. COOPERATIVE AGREEMENTS WITH STATE TAX AUTHORITIES.

"(a) AUTHORIZATION OF AGREEMENTS.—The Secretary is hereby authorized to enter into cooperative agreements with State tax authorities for purposes of enhancing joint tax administration. Such agreements may provide for—

"(1) joint filing of Federal and State income tax returns,

"(2) single processing of such returns,

"(3) joint collection of taxes (other than Federal income taxes), and

"(4) such other provisions as may enhance joint tax administration.

"(b) SERVICES ON REIMBURSABLE BASIS.—Any agreement under subsection (a) may require reimbursement for services provided by either party to the agreement.

"(c) AVAILABILITY OF FUNDS.—Any funds appropriated for purposes of the administration of this title shall be available for purposes of carrying out the Secretary's responsibility under an agreement entered into under subsection (a). Any reimbursement received pursuant to such an agreement shall be credited to the amount so appropriated.

"(d) STATE TAX AUTHORITY.—For purposes of this section, the term 'State tax authority' means agency, body, or commission referred to in section 6103(d)(1)."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following new item:

"Sec. 7524. Cooperative agreements with State tax authorities."

TITLE XV—MEDICARE

[Text to be inserted]

TITLE XVI—TRANSFORMATION OF THE MEDICAID PROGRAM

SEC. 16000. SHORT TITLE.

This title may be cited as the "Medicaid Transformation Act of 1995".

SEC. 16001. TRANSFORMATION OF MEDICAID PROGRAM.

The Social Security Act is amended by adding at the end the following new title:

"TITLE XXI—MEDIGRANT PROGRAM FOR LOW-INCOME INDIVIDUALS AND FAMILIES

"TABLE OF CONTENTS OF TITLE

“SEC. 2100. PURPOSE; STATE MEDIGRANT PLANS.

“(a) PURPOSE.—The purpose of this title is to provide block grants to States to enable them to provide medical assistance to low-income individuals and families in a more effective, efficient, and responsive manner.

“(b) STATE PLAN REQUIRED.—A State is not eligible for payment under section 2122 of this title unless the State has submitted to the Secretary under part E a plan (in this title referred to as a ‘MediGrant plan’) that—

“(1) sets forth how the State intends to use the funds provided under this title to provide medical assistance to needy individuals and families consistent with the provisions of this title, and

“(2) is approved under such part.

“(c) CONTINUED APPROVAL.—An approved MediGrant plan shall continue in effect unless and until—

“(1) the State amends the plan under section 2152,

“(2) the State terminates participation under this title under section 2153, or

“(3) the Secretary finds substantial noncompliance of the plan with the requirements of this title under section 2154.

“(d) STATE ENTITLEMENT.—This title constitutes budget authority in advance of appropriations Acts, and represents the obligation of the Federal Government to provide for the payment to States of amounts provided under part C.

“PART A—OBJECTIVES, GOALS, AND PERFORMANCE UNDER STATE PLANS

“SEC. 2101. DESCRIPTION OF STRATEGIC OBJECTIVES AND PERFORMANCE GOALS.

“(a) DESCRIPTION.—A MediGrant plan shall include a description of the strategic objectives and performance goals the State has established for providing health care services to low-income populations under this title, including a general description of the manner in which the plan is designed to meet these objectives and goals.

“(b) CERTAIN OBJECTIVES AND GOALS REQUIRED.—A MediGrant plan shall include strategic objectives and performance goals relating to rates of childhood immunizations and reductions in infant mortality and morbidity.

“(c) CONSIDERATIONS.—In specifying these objectives and goals the State may consider factors such as the following:

“(1) The State’s priorities with respect to such areas as providing assistance to low-income populations.

“(2) The State’s priorities with respect to the general public health and the health status of individuals eligible for assistance under the MediGrant plan.

“(3) The State’s financial resources, the particular economic conditions in the State, and relative adequacy of the health care infrastructure in different regions of the State.

“(d) PERFORMANCE MEASURES.—To the extent practicable—

“(1) one or more performance goals shall be established by the State for each strategic objective identified in the MediGrant plan; and

“(2) the MediGrant plan shall describe, how program performance will be—

“(A) measured through objective, independently verifiable means, and

“(B) compared against performance goals, in order to determine the State’s performance under this title.

“(e) PERIOD COVERED.—

“(1) STRATEGIC OBJECTIVES.—The strategic objectives shall cover a period of not less than 5 years and shall be updated and revised at least every 3 years.

“(2) PERFORMANCE GOALS.—The performance goals shall be established for dates that are not more than 3 years apart.

“SEC. 2102. ANNUAL REPORTS.

“(a) IN GENERAL.—In the case of a State with a MediGrant plan that is in effect for part or all of a fiscal year, no later than March 31 following such fiscal year (or March 31, 1998, in the case of fiscal year 1996) the State shall prepare and submit to the Secretary and the Congress a report on program activities and performance under this title for such fiscal year.

“(b) CONTENTS.—Each annual report under this section for a fiscal year shall include the following:

“(1) EXPENDITURE AND BENEFICIARY SUMMARY.—

“(A) INITIAL SUMMARY.—For the report for fiscal year 1997 (and, if applicable, fiscal year 1996), a summary of all expenditures under the MediGrant plan during the fiscal year (and during any portions of fiscal year 1996 during which the MediGrant plan was in effect under this title) as follows:

"(i) Aggregate medical assistance expenditures, disaggregated to the extent required to determine compliance with the set-aside requirements of subsections (a) through (c) section 2112 and to compute the case mix index under section 2121(d)(3).

"(ii) For each general category of eligible individuals (specified in subsection (c)(1), aggregate medical assistance expenditures and the total and average number of eligible individuals under the MediGrant plan.

"(iii) By each general category of eligible individuals, total expenditures for each of the categories of health care items and services (specified in subsection (c)(2)) which are covered under the MediGrant plan and provided on a fee-for-service basis.

"(iv) By each general category of eligible individuals, total expenditures for payments to capitated health care organizations (as defined in section 2114(c)(1)).

"(v) Total administrative expenditures.

"(B) SUBSEQUENT SUMMARIES.—For reports for each succeeding fiscal year, a summary of—

"(i) all expenditures under the MediGrant plan consistent with the reporting format specified by the MediGrant Task Force under section 2106(d)(1), and

"(ii) the total and average number of eligible individuals under the MediGrant plan for each general category of eligible individuals..

"(2) UTILIZATION SUMMARY.—

"(A) INITIAL SUMMARY.—For the report for fiscal year 1997 (and, if applicable, fiscal year 1996), summary statistics on the utilization of health care services under the MediGrant plan during the year (and during any portions of fiscal year 1996 during which the MediGrant plan was in effect under this title) as follows:

"(i) For each general category of eligible individuals and for each of the categories of health care items and services which are covered under the MediGrant plan and provided on a fee-for-service basis, the number and percentage of persons who received such a type of service or item during the period covered by the report.

"(ii) Summary of health care utilization data reported to the State by capitated health care organizations.

"(B) SUBSEQUENT SUMMARIES.—For reports for each succeeding fiscal year, summary statistics on the utilization of health care services under the MediGrant plan consistent with the reporting format specified by the MediGrant Task Force under section 2106(d)(1).

"(3) ACHIEVEMENT OF PERFORMANCE GOALS.—With respect to each performance goal established under section 2101 and applicable to the year involved—

"(A) a brief description of the goal;

"(B) data on the actual performance with respect to the goal;

"(C) a review of the extent to which the goal was achieved, based on such data; and

"(D) where a performance goal has not been met—

"(i) why the goal was not met, and

"(ii) actions to be taken in response to such performance (including adjustments in performance goals or program activities for subsequent years).

"(4) PROGRAM EVALUATIONS.—A summary of the findings of evaluations under section 2103 completed during the fiscal year covered by the report.

"(5) FRAUD AND ABUSE AND QUALITY CONTROL ACTIVITIES.—A general description of the State's activities under part D to detect and deter fraud and abuse and to assure quality of services provided under the program.

"(6) PLAN ADMINISTRATION.—

"(A) A description of the administrative roles and responsibilities of entities in the State responsible for administration of this title.

"(B) Organizational charts for each entity in the State primarily responsible for activities under this title.

"(C) A brief description of each interstate compact (if any) the State has entered into with other States with respect to activities under this title.

"(D) General citations to the State statutes and administrative rules governing the State's activities under this title.

"(7) INPATIENT HOSPITAL PAYMENTS.—With respect to inpatient hospital services provided under the MediGrant plan on a fee-for-service basis, a description of the average amount paid per discharge in the fiscal year compared either to the average charge for such services or to the State's estimate of the average amount paid per discharge by commercial health insurers in the State.

"(c) DEFINITIONS.—In this section:

"(1) Each of the following is a general category of eligible individuals:

"(A) Children.

"(B) Blind or disabled adults under 65 years of age.

"(C) Persons 65 years of age or older.

"(D) Other adults.

"(2) The health care items and services described in each subparagraph of section 2171(a)(1) shall be considered a separate category of health care items and services.

"SEC. 2103. PERIODIC, INDEPENDENT EVALUATIONS.

"(a) IN GENERAL.—During fiscal year 1998 and every third fiscal year thereafter, each State shall provide for an evaluation of the operation of its MediGrant plan under this title.

"(b) INDEPENDENT.—Each such evaluation with respect to an activity under the MediGrant plan shall be conducted by an entity that is neither responsible under State law for the submission of the State plan (or part thereof) nor responsible for administering (or supervising the administration of) the activity. If consistent with the previous sentence, such an entity may be a college or university, a State agency, a legislative branch agency in a State, or an independent contractor.

"(c) RESEARCH DESIGN.—Each such evaluation shall be conducted in accordance with a research design that is based on generally accepted models of survey design and sampling and statistical analysis.

"SEC. 2104. DESCRIPTION OF PROCESS FOR MEDIGRANT PLAN DEVELOPMENT.

"Each MediGrant plan shall include a description of the process under which the plan shall be developed and implemented in the State (consistent with section 2105).

"SEC. 2105. CONSULTATION IN MEDIGRANT PLAN DEVELOPMENT.

"(a) PUBLIC NOTICE PROCESS.—

"(1) IN GENERAL.—Before submitting a MediGrant plan or a plan amendment described in paragraph (3) to the Secretary under part E, a State shall provide—

"(A) public notice respecting the submittal of the proposed plan or amendment, including a general description of the plan or amendment;

"(B) a means for the public to inspect or obtain a copy (at reasonable charge) of the proposed plan or amendment; and

"(C) an opportunity for submittal and consideration of public comments on the proposed plan or amendment.

The previous sentence shall not apply to a revision of a MediGrant plan (or revision of an amendment to a plan) made by a State under section 2154(c)(1) or to a plan amendment withdrawal described in section 2152(c)(4).

"(2) CONTENTS OF NOTICE.—A notice under paragraph (1)(A) for a proposed plan or amendment shall include a description of—

"(A) the general purpose of the proposed plan or amendment (including applicable effective dates),

"(B) where the public may inspect the proposed plan or amendment,

"(C) how the public may obtain a copy of the proposed plan or amendment and the applicable charge (if any) for the copy, and

"(D) how the public may submit comments on the proposed plan or amendment, including any deadlines applicable to consideration of such comments.

"(3) AMENDMENTS DESCRIBED.—An amendment to a MediGrant plan described in this paragraph is an amendment which makes a material and substantial change in eligibility under the MediGrant plan or the benefits provided under the plan.

"(4) PUBLICATION.—Notices under this subsection may be published (as selected by the State) in one or more daily newspapers of general circulation in the State or in any publication used by the State to publish State statutes or rules.

"(5) COMPARABLE PROCESS.—A separate notice, or notices, shall not be required under this subsection for a State if notice of the MediGrant plan or an amendment to the plan will be provided under a process specified in State law that is substantially equivalent to the notice process specified in this subsection.

"(b) ADVISORY COMMITTEE.—

“(1) IN GENERAL.—Each State with a MediGrant plan shall establish and maintain an advisory committee.

“(2) CONSULTATION.—The State shall periodically consult with the advisory committee in the development, revision, and monitoring the performance of the MediGrant plan, including—

“(A) the development of strategic objectives and performance goals under section 2101,

“(B) the annual report under section 2102, and

“(C) the research design under section 2103(c).

“(3) GEOGRAPHIC DIVERSITY.—The composition of the advisory committee shall be chosen in a manner that assures some representation on the advisory committee of the different general geographic regions of the State. Nothing in the previous sentence shall be construed as requiring proportional representation of geographic areas in a State.

“(4) CONSTRUCTION.—Nothing in this title shall be construed as preventing a State from establishing more than one advisory committee, including specialized advisory committees that represent the interests of specific population groups, provider groups, or geographic areas.

“SEC. 2106. MEDIGRANT TASK FORCE.

“(a) IN GENERAL.—The Secretary shall provide for the establishment of a MediGrant Task Force (in this section referred to as the ‘Task Force’).

“(b) COMPOSITION.—The Task Force shall consist of 6 members appointed by the chair of the National Governors Association and 6 members appointed by the vice chair of the National Governors Association.

“(c) ADVISORY GROUP FOR TASK FORCE.—The Secretary shall provide for the establishment of an advisory group to assist the Task Force in carrying out its duties under this section, consisting of one representative appointed by each of the following associations:

“(1) National Committee for Quality Assurance.

“(2) Joint Commission for the Accreditation of Healthcare Organizations.

“(3) Group Health Association of America.

“(4) American Managed Care and Review Association.

“(5) Association of State and Territorial Health Officers.

“(6) American Medical Association.

“(7) American Hospital Association.

“(8) American Dental Association.

“(9) American College of Gerontology.

“(10) American Health Care Association.

“(11) An association identified by the Secretary as representing the interests of disabled individuals.

“(12) An association identified by the Secretary as representing the interests of children.

“(13) An association identified by the Secretary as representing the interests of the elderly.

“(14) An association identified by the Secretary as representing the interests of mentally ill individuals.

Any reference in this subsection to a particular group shall be deemed a reference to any successor to such group.

“(d) DUTIES.—

“(1) FORMAT FOR EXPENDITURE AND UTILIZATION SUMMARIES.—The Task Force shall specify, by not later than December 31, 1996, the format of expenditure summaries and utilization summaries required under section 2102. Such format may provide for the reporting of different information from that required under section 2102(a), but shall include the reporting of at least the information described in section 2102(b)(1)(A)(i).

“(2) MODELS AND SUGGESTIONS.—The Task Force shall study and report to Congress and the States, by not later than April 1, 1997, recommendations on the following:

“(A) Recommended models for strategic objectives and performance goals for consideration by States in the development of such objectives and goals under section 2102, including alternative models for each of the objectives and goals described in section 2101(b).

“(B) For each suggested model for a strategic objective or performance goal suggested methodologies for States to consider in measuring and verifying the objective or goal.

"(C) An assessment of the potential usefulness to States of quality assurance safeguards, utilization data sets, and accreditation programs that are used or under development in the private sector.

"(D) Recommended designs and evaluation methodologies for consideration by States in providing for independent evaluations under section 2103.

"(3) CONSTRUCTION.—Nothing in this subsection shall be construed as requiring a State to adopt any of the strategic objectives or performance goals suggested under paragraph (2).

"(e) ADMINISTRATIVE ASSISTANCE.—Administrative support for the Task Force shall be provided by the Agency for Health Care Policy and Research (or, in the absence of such Agency, the Secretary).

"PART B—ELIGIBILITY, BENEFITS, AND SET-ASIDES

"SEC. 2111. GENERAL DESCRIPTION OF ELIGIBILITY AND BENEFITS.

"(a) IN GENERAL.—Each MediGrant plan shall include a description (consistent with this title) of the following:

"(1) ELIGIBLE POPULATION.—The population eligible for medical assistance under the plan, including—

"(A) any limitations on categories of such individuals;

"(B) any limitations as to the duration of eligibility;

"(C) any eligibility standards relating to age, income (including any standards relating to spenddowns), residency, resources, disability status, immigration status, or employment status of individuals;

"(D) methods of establishing (and continuing) eligibility and enrollment (including the methodology for computing family income);

"(E) the eligibility standards in the plan that protect the income and resources of a married individual who is living in the community and whose spouse is residing in an institution in order to prevent the impoverishment of the community spouse; and

"(F) any other standards relating to eligibility for medical assistance under the plan.

"(2) SCOPE OF ASSISTANCE.—The amount, duration, and scope of health care services and items covered under the plan, including differences among different eligible population groups.

"(3) DELIVERY METHOD.—The State's approach to delivery of medical assistance, including a general description of—

"(A) the use (or intended use) of vouchers, fee-for-service, or managed care arrangements (such as capitated health care plans, case management, and case coordination), and

"(B) utilization control systems.

"(4) FEE-FOR-SERVICE BENEFITS.—To the extent that medical assistance is furnished on a fee-for-service basis—

"(A) how the State determines the qualifications of health care providers eligible to provide such assistance, and

"(B) how the State determines rates of reimbursement for providing such assistance.

"(5) COST-SHARING.—Beneficiary cost-sharing (if any), including variations in such cost-sharing by population group or type of service and financial responsibilities of parents of recipients under 21 years of age and the spouses of recipients.

"(6) UTILIZATION INCENTIVES.—Incentives or requirements (if any) to encourage the appropriate utilization of services.

"(7) TREATMENT OF HEALTH CENTERS.—

"(A) IN GENERAL.—In the case of a State in which one or more health centers is located, the MediGrant plan shall include a description of—

"(i) what provision (if any) has been made for payment for items and services furnished by health centers, and

"(ii) the manner in which medical assistance for low-income eligible individuals who received health care services at health centers on or before the date of the enactment of this title may be provided, as determined by the State in consultation with the health centers in the State.

"(B) HEALTH CENTER DEFINED.—For purposes of subparagraph (A), the term 'health center' means an entity that—

"(i) is receiving a grant under section 329, 330, 340, or 340A of the Public Health Service Act; or "(ii) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, was determined by the Secretary to meet the requirements to receive such a grant.

"(8) SUPPORT FOR CERTAIN HOSPITALS.—

"(A) IN GENERAL.—With respect to hospitals described in subparagraph (B) located in the State, the MediGrant plan shall includes a description—

"(i) of the extent to which provisions have been made for expenditures for items and services furnished by such hospitals and covered under the plan, and

"(ii) for individuals who (I) are enrolled for benefits for covered services under the MediGrant plan and (II) were previously receiving benefits for such services under the medicaid program by or through such hospitals, where or how they will receive benefits for such services under the MediGrant plan if the MediGrant plan does not permit such individuals to obtain benefits for those services by or through such hospitals.

"(B) HOSPITALS DESCRIBED.—For purposes of subparagraph (A), a hospital described in this subparagraph is a subsection (d) hospital (as defined in section 1886(d)(1)(B)) that is described in clauses (i) and (ii) of section 340B(a)(4)(L) of the Public Health Service Act.

"(b) IMMUNIZATIONS FOR CHILDREN.—The MediGrant plan shall provide medical assistance for immunizations for children eligible for any medical assistance under the MediGrant plan, in accordance with a schedule for immunizations established by the Health Department of the State in consultation with the individuals and entities in the State responsible for the administration of the plan.

"(c) EQUAL PAYMENT RATES FOR RURAL PROVIDERS.—A State with a MediGrant plan shall establish payment rates for all services of rural providers that are comparable to the payment rates established for like services of such type of providers not in rural areas; except that a State may provide for incentive payments to attract and retain providers to medically underserved areas.

"(d) PREEXISTING CONDITION EXCLUSIONS.—Notwithstanding any other provision of this title—

"(1) a MediGrant plan may not deny or exclude coverage of any item or service for an eligible individual for benefits under the MediGrant plan for such item or service on the basis of a preexisting condition; and

"(2) if a State contracts or makes other arrangements (through the eligible individual or through another entity) with a capitated health care organization, insurer, or other entity, for the provision of items or services to eligible individuals under the MediGrant plan and the State permits such organization, insurer, or other entity to exclude coverage of a covered item or service on the basis of a preexisting condition, the State shall provide, through its MediGrant plan, for such coverage (through direct payment or otherwise) for any such covered item or service denied or excluded on the basis of a preexisting condition.

"SEC. 2112. SET-ASIDES OF FUNDS FOR POPULATION GROUPS.

"(a) FOR TARGETED LOW-INCOME FAMILIES.—

"(1) IN GENERAL.—Subject to subsection (e), a MediGrant plan shall provide that the amount of funds expended under the plan for medical assistance for targeted low-income families (as defined in paragraph (3)) for a fiscal year shall be not less than the minimum low-income-family percentage specified in paragraph (2) of the total funds expended under the plan for all medical assistance for the fiscal year.

"(2) MINIMUM LOW-INCOME-FAMILY PERCENTAGE.—The minimum low-income-family percentage specified in this paragraph for a State is equal to 85 percent of the average percentage of the expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994 which were attributable to expenditures for medical assistance for mandated benefits (as defined in subsection (h)) furnished to individuals—

"(A) who (at the time of furnishing the assistance) were under 65 years of age,

"(B) whose coverage (at such time) under a State plan under title XIX was required under Federal law, and

"(C) whose eligibility for such coverage (at such time) was not on a basis directly related to disability status (including being blind).

"(3) TARGETED LOW-INCOME FAMILY DEFINED.—In this subsection, the term 'targeted low-income family' means a family (which may be an individual)—

"(A) which includes a child or a pregnant woman, and

“(B) the income of which does not exceed 185 percent of the poverty line applicable to a family of the size involved.

“(b) FOR LOW-INCOME ELDERLY.—

“(1) SET-ASIDES.—Subject to subsection (e)—

“(A) GENERAL SET-ASIDE.—A MediGrant plan shall provide that the amount of funds expended under the plan for medical assistance for eligible low-income individuals 65 years of age or older for a fiscal year shall be not less than the minimum low-income-elderly percentage specified in paragraph (2)(A) of the total funds expended under the plan for all medical assistance for the fiscal year.

“(B) SET-ASIDE FOR MEDICARE PREMIUM ASSISTANCE.—A MediGrant plan shall provide that the amount of funds expended under the plan for medical assistance for medicare cost-sharing described in section 2171(c)(1) for a fiscal year shall be not less than the minimum medicare premium assistance percentage specified in paragraph (2)(B) of the total funds expended under the plan for all medical assistance for the fiscal year.

“(2) MINIMUM PERCENTAGES.—

“(A) FOR GENERAL SET-ASIDE.—The minimum low-income-elderly percentage specified in this subparagraph for a State is equal to 85 percent of the average percentage of the expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994 which was attributable to expenditures for medical assistance for mandated benefits furnished to individuals—

“(i) whose eligibility for such assistance was based on their being 65 years of age or older; and

“(ii)(I) whose coverage (at such time) under a State plan under title XIX was required under Federal law, or (II) who (at such time) were residents of a nursing facility.

“(B) FOR SET-ASIDE FOR MEDICARE PREMIUM ASSISTANCE.—The minimum medicare premium assistance percentage specified in this subparagraph for a State is equal to 85 percent of the average percentage of the expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994 which was attributable to expenditures for medical assistance for medicare premiums described in section 1905(p)(3)(A) for individuals whose coverage (at such time) for such assistance for such premiums under a State plan under title XIX was required under Federal law.

“(c) FOR LOW-INCOME DISABLED PERSONS.—

“(1) IN GENERAL.—Subject to subsection (e), a MediGrant plan shall provide that the percentage of funds expended under the plan for medical assistance for eligible low-income individuals who are under 65 years of age and are eligible for such assistance on the basis of a disability (including being blind) for a fiscal year is not less than the minimum low-income-disabled percentage specified in paragraph (2) of the total funds expended under the plan for medical assistance for the fiscal year.

“(2) MINIMUM LOW-INCOME-DISABLED PERCENTAGE.—The minimum low-income-disabled percentage specified in this paragraph for a State is equal to 85 percent of the average percentage of the expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994 which was attributable to expenditures for medical assistance for mandated benefits furnished to individuals—

“(A) whose coverage (at such time) under a State plan under title XIX was required under Federal law, and

“(B) whose coverage (at such time) was on a basis directly related to disability status (including being blind).

“(d) USE OF RESIDUAL FUNDS.—

“(1) IN GENERAL.—Subject to limitations on payment under section 2123, any funds not required to be expended under the set-asides under the previous subsections may be expended under the MediGrant plan for any of the following:

“(A) ADDITIONAL MEDICAL ASSISTANCE.—Medical assistance for eligible low-income individuals (as defined in section 2171(b)), in addition to any medical assistance made available under a previous subsection.

“(B) MEDICALLY-RELATED SERVICES.—Payment for medically-related services (as defined in paragraph (2)).

“(C) ADMINISTRATION.—Payment for the administration of the MediGrant plan.

"(2) MEDICALLY-RELATED SERVICES DEFINED.—In this title, the term 'medically-related services' means services reasonably related to, or in direct support of, the State's attainment of one or more of the strategic objectives and performance goals established under section 2101, but does not include items and services included on the list under section 2171(a)(1) (relating to the definition of medical assistance).

"(e) EXCEPTIONS TO MINIMUM SET-ASIDES.—

"(1) ALTERNATIVE MINIMUM SET-ASIDES.—

"(A) IN GENERAL.—A State may provide in its MediGrant plan (through an amendment to the plan) for a lower dollar amount of expenditures than the minimum amounts specified in any (or all) of paragraphs (2) of subsections (a), (b), and (c) if State determines (and certifies to the Secretary) that—

"(i) the health care needs of the low-income populations described in paragraph (1) of the respective subsection who are eligible for medical assistance under the plan during the previous fiscal year (or medicare premium assistance needs described in subsection (b)(1)(B)) can be reasonably met without the expenditure of the amounts otherwise required to be expended, and

"(ii) the performance goals established under section 2101 relating to the respective population can reasonably be met with such lower amount of funds expended.

"(B) PERIOD OF APPLICATION.—The determination and certification under subparagraph (A) shall be made for such period as a State may request, but may not be made for a period of more than 3 consecutive Federal fiscal years (beginning with the first fiscal year for which the lower amount is sought). A new determination and certification must be made under such paragraph for any subsequent period.

"(C) NO EXCEPTION PERMITTED BEFORE FISCAL YEAR 1998.—This paragraph may not apply with respect to a State for a fiscal year before fiscal year 1998.

"(2) INDEPENDENT CERTIFICATION OF COMPLIANCE WITH GOALS.—

"(A) IN GENERAL.—For purposes of section 2151(c), a MediGrant plan shall not be considered to be in substantial violation of the requirements of this section if the amount of actual State expenditures specified in any (or all) of paragraphs (1) of subsections (a), (b), and (c) is lower than the minimum amounts specified in any (or all) of paragraphs (2) of subsections (a), (b), and (c) if an independent actuary determines and certifies to the State that the MediGrant plan is reasonably designed to result in a level of expenditures which is consistent with the requirements of such subsections.

"(B) LIMIT ON VARIATION.—Subparagraph (A) shall not apply in the case of a MediGrant plan for which the actual State expenditures described in any (or all) of paragraphs (1) of subsections (a), (b), and (c) are less than 95 percent of the expenditures which would be made if the amount of State expenditures specified in any (or all) of such paragraphs was equal to the applicable minimum amount specified in any (or all) of paragraphs (2) of subsections (a), (b), and (c).

"(3) TREATMENT OF STATES WITH NO OPTIONAL BENEFITS.—In the case of a State for which all expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994 were expenditures for medical assistance for mandated benefits, '75 percent' shall be substituted for '85 percent' each place it appears in paragraphs (2) of subsections (a), (b), and (c).

"(f) COMPUTATIONS.—

"(1) MINIMUM PERCENTAGES.—States shall calculate the minimum percentages under subsections (a)(2), (b)(2), and (c)(2) in a reasonable manner consistent with reports submitted to the Secretary for the fiscal years involved.

"(2) EXCLUSION OF PAYMENTS FOR CERTAIN ALIENS.—For purposes of this section, medical assistance attributable to the exception provided under section 1903(v)(2) shall not be considered to be expenditures for medical assistance.

"(g) BENEFITS INCLUDED FOR PURPOSES OF COMPUTING SET ASIDES.—In this section, the term 'mandated benefits'—

"(1) means medical assistance for items and services described in section 1905(a) to the extent such assistance with respect to such items and services was required to be provided under title XIX,

"(2) includes medical assistance for medicare cost-sharing only to the extent such assistance was required to be provided under section 1902(a)(10)(E), and

"(3) does not include medical assistance attributable to disproportionate share payment adjustments described in section 1923.

"SEC. 2113. PREMIUMS AND COST-SHARING.

"(a) IN GENERAL.—Subject to subsection (b), if any charges are imposed under the MediGrant plan for cost-sharing (as defined in subsection (d)), such cost-sharing shall be pursuant to a public cost-sharing schedule.

"(b) LIMITATION ON PREMIUM AND CERTAIN COST-SHARING FOR LOW-INCOME FAMILIES INCLUDING CHILDREN OR PREGNANT WOMEN.—

"(1) IN GENERAL.—In the case of a family described in paragraph (2)—

"(A) the plan shall not impose any premium, and

"(B) the plan shall not (except as provided in subsection (c)(1)) impose any cost-sharing with respect to primary and preventive care services (as defined by the State) covered under the MediGrant plan for children or pregnant women unless such cost-sharing is nominal in nature.

"(2) FAMILY DESCRIBED.—A family described in this paragraph is a family (which may be an individual) which—

"(A) includes a child or a pregnant woman,

"(B) is made eligible for medical assistance under the MediGrant plan, and

"(C) the income of which does not exceed 100 percent of the poverty line applicable to a family of the size involved.

"(c) CERTAIN COST-SHARING PERMITTED.—Nothing in this section shall be construed as preventing a MediGrant plan (consistent with subsection (b))—

"(1) from imposing cost-sharing to discourage the inappropriate use of emergency medical services (delivered through a hospital emergency room, a medical transportation provider, or otherwise);

"(2) from imposing premiums and cost-sharing differentially in order to encourage the use of primary and preventive care and discourage unnecessary or less economical care;

"(3) from scaling cost-sharing in a manner that reflects economic factors, employment status, and family size;

"(4) from scaling cost-sharing based on the availability to the individual or family of other health insurance coverage; or

"(5) from scaling cost-sharing based on participation in employment training program, drug or alcohol abuse treatment, counseling programs, or other programs promoting personal responsibility.

"(d) COST-SHARING DEFINED.—In this section, the term 'cost-sharing' includes copayments, deductibles, coinsurance, and other charges for the provision of health care services.

"SEC. 2114. DESCRIPTION OF PROCESS FOR DEVELOPING CAPITATION PAYMENT RATES.

"(a) IN GENERAL.—If a State contracts (or intends to contract) with a capitated health care organization (as defined in subsection (c)(1)) under which the State makes a capitation payment (as defined in subsection (c)(2)) to the organization for providing or arranging for the provision of medical assistance under the MediGrant plan for a group of services (including at least inpatient hospital services and physicians' services), the plan shall include a description of the following:

"(1) USE OF ACTUARIAL SCIENCE.—The extent and manner in which the State uses actuarial science—

"(A) to analyze and project health care expenditures and utilization for individuals enrolled (or to be enrolled) in such an organization under the MediGrant plan, and

"(B) to develop capitation payment rates, including a brief description of the general methodologies used by actuaries.

"(2) QUALIFICATIONS OF ORGANIZATIONS.—The general qualifications (including any accreditation, State licensure or certification, or provider network standards) required by the State for participation of capitated health care organizations under the MediGrant plan.

"(3) DISSEMINATION PROCESS.—The process used by the State under subsection (b) and otherwise to disseminate, before entering into contracts with capitated health care organizations, actuarial information to such organizations on the historical fee-for-service costs (or, if not available, other recent financial data associated with providing covered services) and utilization associated with individuals described in paragraph (1)(A).

"(b) PUBLIC NOTICE AND COMMENT.—Under the MediGrant plan the State shall provide a process for providing, before the beginning of each contract year—

"(1) public notice of—

"(A) the amounts of the capitation payments (if any) made under the plan for the contract year preceding the public notice, and

"(B)(i) the information described under subsection (a)(1) with respect to capitation payments for the contract year involved or (ii) the amounts of the capitation payments the State expects to make for the contract year involved,

unless such information is designated as proprietary and not subject to public disclosure under State law; and

"(2) an opportunity for receiving public comment on the amounts and information for which notice is provided under paragraph (1).

"(c) DEFINITIONS.—In this title:

"(1) CAPITATED HEALTH CARE ORGANIZATION.—The term 'capitated health care organization' means a health maintenance organization or any other entity (including a health insuring organization, managed care organization, prepaid health plan, integrated service network, or similar entity) which under State law is permitted to accept capitation payments for providing (or arranging for the provision of) a group of items and services including at least inpatient hospital services and physicians' services.

"(2) CAPITATION PAYMENT.—The term 'capitation payment' means, with respect to payment, payment on a prepaid capitation basis or any other risk basis to an entity for the entity's provision (or arranging for the provision) of a group of items and services (including at least inpatient hospital services and physicians' services).

"SEC. 2115. CONSTRUCTION.

"(a) NO FEDERAL ENTITLEMENT.—Nothing in this title (including section 2112) shall be construed as creating an entitlement under Federal law in any individual or category of individuals for medical assistance under a MediGrant plan.

"(b) STATE FLEXIBILITY IN BENEFITS, PROVIDER PAYMENTS, GEOGRAPHICAL COVERAGE AREA, AND SELECTION OF PROVIDERS.—Nothing in this title (other than section 2111(b)) shall be construed as requiring a State—

"(1) to provide medical assistance for any particular items or services;

"(2) subject to section 2111(c), to provide for any payments with respect to any specific health care providers or any level of payments for any services;

"(3) to provide for the same medical assistance in all geographical areas or political subdivisions of the State;

"(4) to provide that the medical assistance made available to any individual eligible for medical assistance must not be less in amount, duration, or scope than the medical assistance made available to any other such individual; or

"(5) to provide that any individual eligible for medical assistance with respect to an item or service may choose to obtain such assistance from any institution, agency, or person qualified to provide the item or service.

"(c) STATE FLEXIBILITY WITH RESPECT TO MANAGED CARE.—Nothing in this title shall be construed—

"(1) to limit a State's ability to contract with, on a capitated basis or otherwise, health care plans or individual health care providers for the provision or arrangement of medical assistance;

"(2) to limit a State's ability to contract with health care plans or other entities for case management services or for coordination of medical assistance; or

"(3) to restrict a State from establishing capitation rates on the basis of competition among health care plans or negotiations between the State and one or more health care plans.

"SEC. 2116. LIMITATIONS ON CAUSES OF ACTION.

"(a) IN GENERAL.—Notwithstanding any other provision of this Act (including section 1130A), no person (including an applicant, beneficiary, provider, or health plan) shall have a cause of action under Federal law against a State in relation to a State's compliance (or failure to comply) with the provisions of this title or of a MediGrant plan.

"(b) NO EFFECT ON STATE LAW.—Nothing in subsection (a) may be construed as affecting any actions brought under State law.

"PART C—PAYMENTS TO STATES

"SEC. 2121. ALLOTMENT OF FUNDS AMONG STATES.

"(a) ALLOTMENTS.—

"(1) COMPUTATION.—The Secretary shall provide for the computation of State obligation and outlay allotments in accordance with this section for each fiscal year beginning with fiscal year 1996.

“(2) LIMITATION ON OBLIGATIONS.—

“(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall not enter into obligations with any State under this title for a fiscal year in excess of the obligation allotment for that State for the fiscal year under paragraph (4). The sum of such obligation allotments for all States in any fiscal year (excluding amounts carried over under subparagraph (B) and excluding changes in allotments effected under paragraph (4)(D)) shall not exceed the aggregate limit on new obligation authority specified in paragraph (3) for that fiscal year.

“(B) ADJUSTMENTS.—

“(i) CARRYOVER OF ALLOTMENT PERMITTED.—If the amount of obligations entered into under this part with a State for quarters in a fiscal year is less than the amount of the obligation allotment under this section to the State for the fiscal year, the amount of the difference shall be added to the amount of the State obligation allotment otherwise provided under this section for the succeeding fiscal year.

“(ii) REDUCTION FOR POST-ENACTMENT NEW OBLIGATIONS UNDER TITLE XIX IN FISCAL YEAR 1996.—The amount of the obligation allotment otherwise provided under this section for fiscal year 1996 for a State shall be reduced by the amount of the obligations entered into with respect to the State under section 1903(a) after the date of the enactment of this Act.

“(3) AGGREGATE LIMIT ON NEW OBLIGATION AUTHORITY.—

“(A) IN GENERAL.—For purposes of this subsection, subject to subparagraph (C), the ‘aggregate limit on new obligation authority’, for a fiscal year, is the pool amount under subsection (b) for the fiscal year, divided by the payout adjustment factor (described in subparagraph (B)) for the fiscal year.

“(B) PAYOUT ADJUSTMENT FACTOR.—For purposes of this subsection, the ‘payout adjustment factor’—

“(i) for fiscal year 1996 is .950,

“(ii) for fiscal year 1997 is .986, and

“(iii) for a subsequent fiscal year is .998.

“(C) TRANSITIONAL ADJUSTMENT FOR PRE-ENACTMENT-OBLIGATION OUTLAYS.—In order to account for pre-enactment-obligation outlays described in paragraph (4)(C)(iv), in determining the aggregate limit on new obligation authority under subparagraph (A) for fiscal year 1996, the pool amount for such fiscal year is equal to—

“(i) the pool amount for such year, reduced by

“(ii) $24.624 billion.

“(4) OBLIGATION ALLOTMENTS.—

“(A) GENERAL RULE FOR 50 STATES AND THE DISTRICT OF COLUMBIA.—Except as provided in this paragraph, the ‘obligation allotment’ for any of the 50 States or the District of Columbia for a fiscal year (beginning with fiscal year 1997) is an amount that bears the same ratio to the outlay allotment under subsection (c)(2) for such State or District (not taking into account any adjustment due to an election under paragraph (4)) for the fiscal year as the ratio of—

“(i) the aggregate limit on new obligation authority (less the total of the obligation allotments under subparagraph (B)) for the fiscal year, to

“(ii) the pool amount (less the sum of the outlay allotments for the territories) for such fiscal year.

“(B) TERRITORIES.—The obligation allotment for each of the Commonwealths and territories for a fiscal year is the outlay allotment for such Commonwealth or territory (as determined under subsection (c)(5)) for the fiscal year divided by the payout adjustment factor for the fiscal year (as defined in paragraph (3)(B)).

“(C) TRANSITIONAL RULE FOR FISCAL YEAR 1996.—

“(i) IN GENERAL.—The obligation amount for fiscal year 1996 for any State (including the District, a Commonwealth, or territory) is determined according to the formula: A=(B-C)/D, where—

“(I) ‘A’ is the obligation amount for such State;

“(II) ‘B’ is the outlay allotment of such State for fiscal year 1996, as determined under subsection (c);

“(III) ‘C’ is the amount of the pre-enactment-obligation outlays (as established for such State under clause (ii)); and

"(IV) 'D' is the payout adjustment factor for such fiscal year (as defined in paragraph (3)(B)).

"(ii) PRE-ENACTMENT-OBLIGATION OUTLAY AMOUNTS.—Within 30 days after the date of the enactment of this title, the Secretary shall estimate (based on the best data available) and publish in the Federal Register the amount of the pre-enactment-obligation outlays (as defined in clause (iv)) for each State (including the District, Commonwealths, and territories). The total of such amounts shall equal the dollar amount specified in paragraph (3)(C)(ii).

"(iii) AGREEMENT.—The submission of a MediGrant plan by a State under this title is deemed to constitute the State's acceptance of the obligation allotment limitations under this subsection (including the formula for computing the amount of such obligation allotment).

"(iv) PRE-ENACTMENT-OBLIGATION OUTLAYS DEFINED.—In this subsection, the term 'pre-enactment-obligation outlays' means, for a State, the outlays of the Federal Government that result from obligations that have been incurred under title XIX with respect to the State before the date of the enactment of this title, but for which payments to States have not been made as of such date of enactment.

"(D) ADJUSTMENT TO REFLECT ADOPTION OF ALTERNATIVE GROWTH FORMULA.—Any State that has elected an alternative growth formula under subsection (c)(4) which increases or decreases the dollar amount of an outlay allotment for a fiscal year is deemed to have increased or decreased, respectively, its obligation amount for such fiscal year by the amount of such increase or decrease.

"(b) POOL OF AVAILABLE FUNDS.—

"(1) IN GENERAL.—For purposes of this section, the 'pool amount' under this subsection for—

"(A) fiscal year 1996 is $95.673 billion;

"(B) fiscal year 1997 is $102.135 billion;

"(C) fiscal year 1998 is $106.221 billion;

"(D) fiscal year 1999 is $110.469 billion;

"(E) fiscal year 2000 is $114.888 billion;

"(F) fiscal year 2001 is $119.483 billion;

"(G) fiscal year 2002 is $124.263 billion; and

"(H) each subsequent fiscal year is the pool amount under this paragraph for the previous fiscal year increased by the lesser of 4 percent or the annual percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending in June before the beginning of that subsequent fiscal year.

"(2) NATIONAL MEDIGRANT GROWTH PERCENTAGE.—For purposes of this section for a fiscal year (beginning with fiscal year 1997), the 'national MediGrant growth percentage' is the percentage by which—

"(A) the pool amount under paragraph (1) for the fiscal year, exceeds

"(B) such pool amount for the previous fiscal year.

"(c) STATE OUTLAY ALLOTMENTS.—

"(1) FISCAL YEAR 1996.—

"(A) IN GENERAL.—For each of the 50 States and the District of Columbia, the amount of the State outlay allotment under this subsection for fiscal year 1996 is, subject to paragraph (4), equal to—

"(i) the total amount of Federal expenditures made to the State under title XIX for the 4 quarters in fiscal year 1994, increased by

"(ii) the percentage by which (I) $95,529,490,500 (which represents the total amount of outlay allotments for such States and District for fiscal year 1996), exceeds (II) $83,213,431,458 (which represents Federal medicaid expenditures for such States and District for fiscal year 1994).

"(B) COMPUTATION OF EXPENDITURES.—The amount of Federal expenditures described in subparagraph (A)(i) shall be computed, using data reported on the HCFA Form 64 as of September 1, 1995, based on—

"(i) the amount reported on line 11, or

"(ii) on the amount reported on line 6 multiplied by the ratio of (I) the sum of the amounts so reported on line 11 of such Form for fiscal year 1994 for the 50 States and the District of Columbia, to (II) the sum of the amounts so reported on line 6 of such Form for fiscal year 1994 for such States and District,

whichever is greater.

"(C) LIMITATION ON ADJUSTMENT.—The amount computed under subparagraph (B) shall not be subject to adjustment (based on any subsequent disallowances or otherwise).

"(2) COMPUTATION OF STATE OUTLAY ALLOTMENTS.—

"(A) IN GENERAL.—Subject to the succeeding provisions of this subsection, the amount of the State outlay allotment under this subsection for one of the 50 States and the District of Columbia for a fiscal year (beginning with fiscal year 1997) is equal to the product of—

"(i) the needs-based amount determined under subparagraph (B) for the State for the fiscal year, and

"(ii) the scalar factor described in subparagraph (C) for the fiscal year.

"(B) NEEDS-BASED AMOUNT.—The needs-based amount under this subparagraph for a State for a fiscal year is equal to the product of—

"(i) the State's aggregate expenditure need for the fiscal year (as determined under subsection (d)), and

"(ii) the State's old Federal medical assistance percentage (as defined in section 2122(d)) for the previous fiscal year (or, in the case of fiscal year 1997, the Federal medical assistance percentage determined under section 1905(b) for fiscal year 1996).

"(C) SCALAR FACTOR.—The scalar factor under this subparagraph for a fiscal year is such proportion so that, when it is applied under subparagraph (A)(ii) for the fiscal year (taking into account the floors and ceilings under paragraph (3)), the total of the outlay allotments under this subsection for all the 50 States and the District of Columbia for the fiscal year (not taking into account any increase in an outlay allotment for a fiscal year attributable to the election of an alternative growth formula under paragraph (4)) is equal to the amount by which (i) the pool amount for the fiscal year (as determined under subsection (b)), exceeds (ii) the sum of the outlay allotments provided under paragraph (5) for the Commonwealths and territories for the fiscal year.

"(3) FLOORS AND CEILINGS.—

"(A) FLOORS.—In no case shall the amount of the State outlay allotment under paragraph (2) for a fiscal year be less than the following:

"(i) FLOOR BASED ON PREVIOUS YEAR'S OUTLAY ALLOTMENT.—102 percent of the amount of the State outlay allotment under this subsection for the previous fiscal year.

"(ii) FLOOR BASED ON OUTLAY ALLOTMENT GROWTH RATE IN FIRST YEAR.—Beginning with fiscal year 1998, in the case of a State for which the outlay allotment under this subsection for fiscal year 1997 exceeded its outlay allotment under this subsection for the previous fiscal year by—

"(I) more than 125 percent of the national MediGrant growth percentage for fiscal year 1997, 104 percent of the amount of the State outlay allotment under this subsection for the previous fiscal year; or

"(II) less than 125 percent (but more than 75 percent) of the national MediGrant growth percentage for fiscal year 1997, 103 percent of the amount of the State outlay allotment under this subsection for the previous fiscal year.

"(B) CEILING.—

"(i) IN GENERAL.—Subject to clause (ii), in no case shall the amount of the State outlay allotment under paragraph (2) for a fiscal year be greater than the product of—

"(I) the State outlay allotment under this subsection for the State for the preceding fiscal year, and

"(II) 133 percent of the national MediGrant growth percentage (as determined under subsection (b)(2)) for the fiscal year involved.

"(ii) SPECIAL RULE.—For a fiscal year after fiscal year 1997, in the case of a State (among the 50 States and the District of Columbia) that is one of the 10 States with the lowest Federal MediGrant spending per resident-in-poverty rates (as determined under clause (iii)) for the fiscal year, the reference in clause (i)(II) to '133 percent' is deemed a reference to '150 percent'.

"(iii) DETERMINATION OF FEDERAL MEDIGRANT SPENDING PER RESIDENT-IN-POVERTY RATE.—For purposes of clause (ii), the 'Federal MediGrant spending per resident-in-poverty rate' for a State for a fiscal year is equal to—

"(I) the State's outlay allotment under this subsection for the previous fiscal year (determined without regard to paragraph (4)), divided by

"(II) the average annual number of residents of the State in poverty (as defined in subsection (d)(2)) with respect to the fiscal year.

"(4) ELECTION OF ALTERNATIVE GROWTH FORMULA.—

"(A) ELECTION.—In order to reduce variations in increases in outlay allotments over time, any of the 50 States or the District of Columbia may elect (by notice provided to the Secretary by not later than April 1, 1996) to adopt an alternative growth rate formula under this paragraph for the determination of the State's outlay allotment in fiscal year 1996 and for the increase in the amount of such allotment in subsequent fiscal years.

"(B) FORMULA.—The alternative growth formula under this paragraph may be any formula under which a portion of the State outlay allotment for fiscal year 1996 under paragraph (1) is deferred and applied to increase the amount of its outlay allotment for one or more subsequent fiscal years, so long as the total amount of such increases for all such subsequent fiscal years does not exceed the amount of the outlay allotment deferred from fiscal year 1996.

"(5) COMMONWEALTHS AND TERRITORIES.—The outlay allotment for each of the Commonwealths and territories for a fiscal year is the maximum amount that could have been certified under section 1108(c) with respect to the Commonwealth or territory for the fiscal year with respect to title XIX, if the national MediGrant growth percentage (as determined under subsection (b)(2)) for the fiscal year had been substituted (beginning with fiscal year 1997) for the percentage increase referred to in section 1108(c)(1)(B).

"(d) STATE AGGREGATE EXPENDITURE NEED DETERMINED.—

"(1) IN GENERAL.—For purposes of subsection (c), the 'State aggregate expenditure need' for a State for a fiscal year is equal to the product of the following 4 factors:

"(A) RESIDENTS IN POVERTY.—The average annual number of residents in poverty of the State with respect to the fiscal year (as determined under paragraph (2)).

"(B) CASE MIX INDEX.—The average of the case mix indexes for the State (as determined under paragraph (3)) for the 3 most recent fiscal years for which data are available, but in no case less than .9 or greater than 1.15.

"(C) INPUT COST INDEX.—The average of the input cost indexes for the State (as determined under paragraph (4)) for the 3 most recent fiscal years for which data are available.

"(D) NATIONAL AVERAGE SPENDING PER RESIDENT IN POVERTY.—The national average spending per resident in poverty (as determined under paragraph (5)).

"(2) RESIDENTS IN POVERTY.—In this section—

"(A) IN GENERAL.—The term 'average annual number of residents in poverty' means, with respect to a State and a fiscal year, the average annual number of residents in poverty (as defined in subparagraph (B)) in the State (based on data made generally available by the Bureau of the Census from the Current Population Survey) for the most recent 3-calendar-year period (ending before the fiscal year) for which such data are available.

"(B) RESIDENT IN POVERTY DEFINED.—The term 'resident in poverty' means an individual whose family income does not exceed the poverty threshold (as such terms are defined by the Office of Management and Budget and are generally interpreted and applied by the Bureau of the Census for the year involved).

"(3) CASE MIX INDEX.—

"(A) IN GENERAL.—In this subsection, the 'case mix index' for a State for a fiscal year is equal to—

"(i) the sum of—

"(I) the projected per recipient expenditures with respect to elderly individuals in the State for the fiscal year (determined under subparagraph (B)),

"(II) the projected per recipient expenditures with respect to the blind and disabled individuals in the State for the fiscal year (determined under subparagraph (C)), and

"(III) the projected per recipient expenditures with respect to other individuals in the State (determined under subparagraph (D));

divided by—

"(ii) the national average spending per recipient determined under subparagraph (E) for the fiscal year involved.

"(B) PROJECTED PER RECIPIENT EXPENDITURES FOR THE ELDERLY.—For purposes of subparagraph (A)(I)(i), the 'projected per recipient expenditures with respect to elderly individuals' in a State for a fiscal year is equal to the product of—

"(i) the national average per recipient expenditures under this title in the 50 States and the District of Columbia for the most recent fiscal year for which data are available for individuals who are 65 years of age or older, and

"(ii) the proportion, of all individuals who received medical assistance under this title in the State in the most recent fiscal year referred to in clause (i), that were individuals described in such clause.

"(C) PROJECTED PER RECIPIENT EXPENDITURES FOR THE BLIND AND DISABLED.—For purposes of subparagraph (A)(i)(II), the 'projected per recipient expenditures with respect to blind and disabled individuals' in a State for a fiscal year is equal to the product of—

"(i) the national average per recipient expenditures under this title in the 50 States and the District of Columbia for the most recent fiscal year for which data are available for individuals who are eligible for medical assistance because they are blind or disabled and under 65 years of age, and

"(ii) the proportion, of all individuals who received medical assistance under this title in the State in the most recent fiscal year referred to in clause (i), that were individuals described in such clause.

"(D) PROJECTED PER RECIPIENT EXPENDITURES FOR OTHER INDIVIDUALS.—For purposes of subparagraph (A)(i)(III), the 'projected per recipient expenditures with respect to other individuals' in a State for a fiscal year is equal to the product of—

"(i) the national average per recipient expenditures under this title in the 50 States and the District of Columbia for the most recent fiscal year for which data are available for individuals who are not described in subparagraph (B)(i) or (C)(i), and

"(ii) the proportion, of all individuals who received medical assistance under this title in the State in the most recent fiscal year referred to in clause (i), that were individuals described in such clause.

"(E) NATIONAL AVERAGE SPENDING PER RECIPIENT.—For purposes of this paragraph, the 'national average expenditures per recipient' for a fiscal year is equal to the sum of—

"(i) the product of (I) the national average described in subparagraph (B)(i), and (II) the proportion, of all individuals who received medical assistance under this title in any of the 50 States or the District of Columbia in the fiscal year referred to in such subparagraph, who are described in such subparagraph;

"(ii) the product of (I) the national average described in subparagraph (C)(i), and (II) the proportion, of all individuals who received medical assistance under this title in any of the 50 States or the District of Columbia in the fiscal year referred to in such subparagraph, who are described in such subparagraph; and

"(iii) the product of (I) the national average described in subparagraph (D)(i), and (II) the proportion, of all individuals who received medical assistance under this title in any of the 50 States or the District of Columbia in the fiscal year referred to in such subparagraph, who are described in such subparagraph.

"(F) DETERMINATION OF NATIONAL AVERAGES AND PROPORTIONS.—

"(i) IN GENERAL.—The national averages per recipient and the proportions referred to in clauses (i) and (ii), respectively, of subparagraphs (B), (C), and (D) and subparagraph (E) shall be determined by the Secretary using the most recent data available.

"(ii) USE OF MEDICAID DATA.—If for a fiscal year there is inadequate data to compute such averages and proportions based on expenditures and numbers of individuals receiving medical assistance under this title, the Secretary may compute such averages based on expenditures and numbers of such individuals under title XIX for the most recent fiscal year for which data are available and, for this purpose—

"(I) any reference in subparagraph (B)(i) to 'individuals 65 years of age or older' is deemed a reference to 'individuals whose eligibility for medical assistance is based on being 65 years of age or older',

"(II) the reference in subparagraph (C)(i) to 'and under 65 years of age' shall be considered to be deleted, and

"(III) individuals whose basis for eligibility for medical assistance was reported as unknown shall not be counted as individuals under subparagraph (D)(i).

"(4) INPUT COST INDEX.—

"(A) IN GENERAL.—In this section, the 'input cost index' for a State for a fiscal year is the sum of—

"(i) 0.15, and

"(ii) 0.85 multiplied by the ratio of (I) the annual average wages for hospital employees in the State for the fiscal year (as determined under subparagraph (B)), to (II) the annual average wages for hospital employees in the 50 States and the District of Columbia for such year (as determined under such subparagraph).

"(B) DETERMINATION OF ANNUAL AVERAGE WAGES OF HOSPITAL EMPLOYEES.—The Secretary shall provide for the determination of annual average wages for hospital employees in a State and, collectively, in the 50 States and the District of Columbia for a fiscal year based on the area wage index applicable to hospitals under 1886(d)(2)(E) (or, if such index no longer exists, a comparable index of hospital wages) for discharges occurring during the fiscal year involved.

"(5) NATIONAL AVERAGE SPENDING PER RESIDENT IN POVERTY.—For purposes of this subsection, the 'national average spending per resident in poverty'—

"(A) for fiscal year 1997 is equal to—

"(i) the sum (for each of the 50 States and the District of Columbia) of the total of the Federal and State expenditures under title XIX for calendar quarters in fiscal year 1994, increased by the percentage specified in subsection (c)(1)(A)(ii), divided by

"(ii) the sum of the number of residents in poverty (as defined in paragraph (2)(A)) for all of the 50 States and the District of Columbia for fiscal year 1994;

"(B) for a succeeding fiscal year is equal to the national average spending per resident in poverty under this paragraph for the preceding fiscal year increased by the national MediGrant growth percentage (as defined in subsection (b)(2)) for the fiscal year involved.

"(e) PUBLICATION OF OBLIGATION AND OUTLAY ALLOTMENTS.—

"(1) NOTICE OF PRELIMINARY ALLOTMENTS.—Not later than April 1 before the beginning of each fiscal year (beginning with fiscal year 1997), the Secretary shall initially compute, after consultation with the Comptroller General, and publish in the Federal Register notice of the proposed obligation and outlay allotments for each State under this section (not taking into account subsection (a)(2)(B)) for the fiscal year. The Secretary shall include in the notice a description of the methodology and data used in deriving such allotments for the year.

"(2) REVIEW BY GAO.—The Comptroller General shall submit to Congress by not later than May 15 of each such fiscal year, a report analyzing such allotments and the extent to which they comply with the precise requirements of this section.

"(3) NOTICE OF FINAL ALLOTMENTS.—Not later than July 1 before the beginning of each such fiscal year, the Secretary, taking into consideration the analysis contained in the report of the Comptroller General under paragraph (2), shall compute and publish in the Federal Register notice of the final allotments under this section (both taking into account and not taking into account subsection (a)(2)(B)) for the fiscal year. The Secretary shall include in the notice a description of any changes in such allotments from the initial allotments published under paragraph (1) for the fiscal year and the reasons for such changes. Once published under this paragraph, the Secretary is not authorized to change such allotments.

"(4) GAO REPORT ON FINAL ALLOTMENTS.—The Comptroller General shall submit to Congress by not later than August 1 of each such fiscal year, a report analyzing the final allotments under paragraph (3) and the extent to which they comply with the precise requirements of this section.

“SEC. 2122. PAYMENTS TO STATES.

“(a) AMOUNT OF PAYMENT.—From the allotment of a State under section 2121 for a fiscal year, subject to the succeeding provisions of this title, the Secretary shall pay to each State which has a MediGrant plan approved under part E, for each quarter in the fiscal year—

“(1) an amount equal to the applicable Federal medical assistance percentage (as defined in subsection (c)) of the total amount expended during such quarter as medical assistance under the plan; plus

“(2) an amount equal to the applicable Federal medical assistance percentage of the total amount expended during such quarter for medically-related services (as defined in section 2112(e)(2)); plus

“(3) subject to section 2123(c)—

“(A) an amount equal to 90 percent of the amounts expended during such quarter for the design, development, and installation of information systems and for providing incentives to promote the enforcement of medical support orders, plus

“(B) an amount equal to 75 percent of the amounts expended during such quarter for medical personnel, administrative support of medical personnel, operation and maintenance of information systems, modification of information systems, quality assurance activities, utilization review, medical and peer review, anti-fraud activities, independent evaluations, coordination of benefits, and meeting reporting requirements under this title, plus

“(C) an amount equal to 50 percent of so much of the remainder of the amounts expended during such quarter as are expended by the State in the administration of the State plan.

“(b) PAYMENT PROCESS.—

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

“(2) PAYMENT.—

“(A) IN GENERAL.—The Secretary shall then pay to the State, in such installments as the Secretary may determine and in accordance with section 6503(a) of title 31, United States Code, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section (or section 1903) to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection (or under section 1903(d)).

“(B) TREATMENT AS OVERPAYMENTS.—Expenditures for which payments were made to the State under subsection (a) shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 2135.

“(C) RECOVERY OF OVERPAYMENTS.—For purposes of this subsection, when an overpayment is discovered, which was made by a State to a person or other entity, the State shall have a period of 60 days in which to recover or attempt to recover such overpayment before adjustment is made in the Federal payment to such State on account of such overpayment. Except as otherwise provided in subparagraph (D), the adjustment in the Federal payment shall be made at the end of the 60 days, whether or not recovery was made.

“(D) NO ADJUSTMENT FOR UNCOLLECTABLES.—In any case where the State is unable to recover a debt which represents an overpayment (or any portion thereof) made to a person or other entity on account of such debt having been discharged in bankruptcy or otherwise being uncollectable, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or portion thereof).

“(3) FEDERAL SHARE OF RECOVERIES.—The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

"(4) TIMING OF OBLIGATION OF FUNDS.—Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

"(5) DISALLOWANCES.—In any case in which the Secretary estimates that there has been an overpayment under this section to a State on the basis of a claim by such State that has been disallowed by the Secretary under section 1116(d), and such State disputes such disallowance, the amount of the Federal payment in controversy shall, at the option of the State, be retained by such State or recovered by the Secretary pending a final determination with respect to such payment amount. If such final determination is to the effect that any amount was properly disallowed, and the State chose to retain payment of the amount in controversy, the Secretary shall offset, from any subsequent payments made to such State under this title, an amount equal to the proper amount of the disallowance plus interest on such amount disallowed for the period beginning on the date such amount was disallowed and ending on the date of such final determination at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly 90-day treasury bill auction rates during such period.

"(c) APPLICABLE FEDERAL MEDICAL ASSISTANCE PERCENTAGE DEFINED.—In this section, except as provided in subsection (f), the term 'applicable Federal medical assistance percentage' means, with respect to one of the 50 States or the District of Columbia, at the State's or District's option—

"(1) the old Federal medical assistance percentage (as determined in subsection (d)), or

"(2) the new Federal medical assistance percentage (as determined under subsection (e)) or, if less, the old Federal medical assistance percentage plus 10 percentage points.

"(d) OLD FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—

"(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (f), the term 'old Federal medical assistance percentage' for any State is 100 percent less the State percentage; and the State percentage is that percentage which bears the same ratio to 45 percent as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii.

"(2) LIMITATION ON RANGE.—In no case shall the old Federal medical assistance percentage be less than 50 percent or more than 83 percent.

"(3) PROMULGATION.—The old Federal medical assistance percentage for any State shall be determined and promulgated in accordance with the provisions of section 1101(a)(8)(B).

"(e) NEW FEDERAL MEDICAL ASSISTANCE PERCENTAGE DEFINED.—

"(1) IN GENERAL.—

"(A) TERM DEFINED.—Except as provided in paragraph (3) and subsection (f), the term 'new Federal medical assistance percentage' means, for each of the 50 States and the District of Columbia, 100 percent reduced by the product 0.39 and the ratio of—

"(i)(I) for each of the 50 States, the total taxable resources (TTR) ratio of the State specified in subparagraph (B), or

"(II) for the District of Columbia, the per capita income ratio specified in subparagraph (C),

to—

"(ii) the aggregate expenditure need ratio of the State or District, as described in subparagraph (D).

"(B) TOTAL TAXABLE RESOURCES (TTR) RATIO.—For purposes of subparagraph (A)(i)(I), the total taxable resources (TTR) ratio for each of the 50 States is—

"(i) an amount equal to the most recent 3-year average of the total taxable resources (TTR) of the State, as determined by the Secretary of the Treasury, divided by

"(ii) an amount equal to the sum of the 3-year averages determined under clause (i) for each of the 50 States.

"(C) PER CAPITA INCOME RATIO.—For purposes of subparagraph (A)(i)(II), the per capita income ratio of the District of Columbia is—

"(i) an amount equal to the most recent 3-year average of the total personal income of the District of Columbia, as determined in accordance with the provisions of section 1101(a)(8)(B), divided by "(ii) an amount equal to the total personal income of the continental United States (including Alaska) and Hawaii, as determined under section 1101(a)(8)(B).

"(D) AGGREGATE EXPENDITURE NEED RATIO.—For purposes of subparagraph (A), with respect to each of the 50 States and the District of Columbia for a fiscal year, the aggregate expenditure need ratio is—

"(i) the State aggregate expenditure need (as defined in section 2121(d)) for the State for the fiscal year, divided by

"(ii) the such of such State aggregate expenditure needs for the 50 States and the District of Columbia for the fiscal year.

"(2) LIMITATION ON RANGE.—Except as provided in subsection (f), the new Federal medical assistance percentage shall in no case be less than 40 percent or greater than 83 percent.

"(3) PROMULGATION.—The new Federal medical assistance percentage for any State shall be promulgated in a timely manner consistent with the promulgation of the old Federal medical assistance percentage under section 1101(a)(8)(B).

"(f) SPECIAL RULES.—For purposes of this title—

"(1) COMMONWEALTHS AND TERRITORIES.—In the case of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa, the old and new Federal medical assistance percentages are 50 percent.

"(2) INDIAN HEALTH SERVICE FACILITIES.—

"(A) IN GENERAL.—The old and new Federal medical assistance percentages shall be 100 percent with respect to the amounts expended as medical assistance for services which are received through a facility described in subparagraph (B) of an Indian tribe or tribal organization or through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 4 of the Indian Health Care Improvement Act).

"(B) FACILITY DESCRIBED.—For purposes of subparagraph (A), a facility described in this subparagraph is a facility of an Indian tribe if—

"(i) the facility is located in a State which, as of the date of the enactment of this title, was not operating its State plan under title XIX pursuant to a Statewide waiver approved under section 1115,

"(ii) the facility is not an Indian Health Service facility,

"(iii) the tribe owns at least 2 such facilities, and

"(iv) the tribe has at least 50,000 members (as of the date of the enactment of this title).

"(3) NO STATE MATCHING REQUIRED FOR CERTAIN EXPENDITURES.—In applying subsection (a)(1) with respect to medical assistance provided to unlawful aliens pursuant to the exception specified in section 2123(e)(2), payment shall be made for the amount of such assistance without regard to any need for a State match.

"SEC. 2123. LIMITATION ON USE OF FUNDS; DISALLOWANCE.

"(a) IN GENERAL.—Funds provided to a State under this title shall only be used to carry out the purposes of this title.

"(b) DISALLOWANCES FOR EXCLUDED PROVIDERS.—

"(1) IN GENERAL.—Payment shall not be made to a State under this part for expenditures for items and services furnished—

"(A) by a provider who was excluded from participation under title V, XVIII, or XX or under this title pursuant to section 1128, 1128A, 1156, or 1842(j)(2), or

"(B) under the medical direction or on the prescription of a physician who was so excluded, if the provider of the services knew or had reason to know of the exclusion.

"(2) EXCEPTION FOR EMERGENCY SERVICES.—Paragraph (1) shall not apply to emergency items or services, not including hospital emergency room services.

"(c) LIMITATIONS.—

"(1) IN GENERAL.—No Federal financial assistance is available for expenditures under the MediGrant plan for—

"(A) medically-related services for a quarter to the extent such expenditures exceed 5 percent of the total expenditures under the plan for the quarter; or

"(B) total administrative expenses (other than expenses described in paragraph (2) during the first 8 quarters in which the plan is in effect under this title) for quarters in a fiscal year to the extent such expenditures exceed the sum of $20,000,000 plus 10 percent of the total expenditures under the plan for the year.

"(2) ADMINISTRATIVE EXPENSES NOT SUBJECT TO LIMITATION.—The administrative expenses referred to in this paragraph are expenditures under the MediGrant plan for the following activities:

"(A) Quality assurance.

"(B) The development and operation of the certification program for nursing facilities and intermediate care facilities for the mentally retarded under section 2137(a)(2).

"(C) Utilization review activities, including medical activities and activities of peer review organizations.

"(D) Inspection and oversight of providers and capitated health care organizations.

"(E) Anti-fraud activities.

"(F) Independent evaluations.

"(G) Activities required to meet reporting requirements under this title.

"(d) TREATMENT OF THIRD PARTY LIABILITY.—No payment shall be made to a State under this part for expenditures for medical assistance provided for an individual under its MediGrant plan to the extent that a private insurer (as defined by the Secretary by regulation and including a group health plan (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), a service benefit plan, and a health maintenance organization) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation because the individual is eligible for or is provided medical assistance under the plan.

"(e) LIMITATION ON PAYMENTS TO EMERGENCY SERVICES FOR NONLAWFUL ALIENS.—

"(1) IN GENERAL.—Notwithstanding the preceding provisions of this section, except as provided in paragraph (2), no payment may be made to a State under this part for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

"(2) EXCEPTION FOR EMERGENCY SERVICES.—Payment may be made under this section for care and services that are furnished to an alien described in paragraph (1) only if—

"(A) such care and services are necessary for the treatment of an emergency medical condition of the alien,

"(B) such alien otherwise meets the eligibility requirements for medical assistance under the MediGrant plan (other than a requirement of the receipt of aid or assistance under title IV, supplemental security income benefits under title XVI, or a State supplementary payment), and

"(C) such care and services are not related to an organ transplant procedure.

"(3) EMERGENCY MEDICAL CONDITION DEFINED.—For purposes of this subsection, the term 'emergency medical condition' means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

"(A) placing the patient's health in serious jeopardy,

"(B) serious impairment to bodily functions, or

"(C) serious dysfunction of any bodily organ or part.

"(f) LIMITATION ON PAYMENT FOR CERTAIN OUTPATIENT PRESCRIPTION DRUGS.—

"(1) IN GENERAL.—No payment may be made to a State under this part for medical assistance for covered outpatient drugs (as defined in section 2175(i)(2)) of a manufacturer provided under the MediGrant plan unless the manufacturer (as defined in section 2175(i)(4)) of the drug—

"(A) has entered into a MediGrant master rebate agreement with the Secretary under section 2175; and

"(B) is complying with the provisions of section 8126 of title 38, United States Code, including the requirement of entering into a master agreement with the Secretary of Veterans Affairs under such section.

"(2) CONSTRUCTION.—Nothing in this subsection shall be construed as requiring a State to participate in the MediGrant master rebate agreement under section 2175.

"(3) EFFECT OF SUBSEQUENT AMENDMENTS.—For purposes of paragraph (1)(B), in determining whether a manufacturer is in compliance with the requirements of section 8126 of title 38, United States Code—

“(A) the Secretary shall not take into account any amendments to such section that are enacted after the enactment of title VI of the Veterans Health Care Act of 1992; and

“(B) a manufacturer is deemed to meet such requirements if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of section 8126 of title 38, United States Code (as in effect immediately after the enactment of the Veterans Health Care Act of 1992) and would have entered into an agreement under such section (as such section was in effect at such time), but for a legislative change in such section after the date of the enactment of the Veterans Health Care Act of 1992.

“(g) LIMITATION ON PAYMENT FOR ABORTIONS.—

“(1) IN GENERAL.—Payment shall not be made to a State under this part for any amount expended under the MediGrant plan to pay for any abortion or to assist in the purchase, in whole or in part, of health benefit coverage that includes coverage of abortion.

“(2) EXCEPTION.—Paragraph (1) shall not apply to an abortion—

“(A) if the pregnancy is the result of an act of rape or incest, or

“(B) in the case where a woman suffers from a physical disorder, illness, or injury that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

“(h) LIMITATION ON PAYMENT FOR ASSISTING DEATHS.—Payment shall not be made to a State under this part for amounts expended under the MediGrant plan to pay for, or to assist in the purchase, in whole or in part, of health benefit coverage that includes payment for any drug, biological product, or service which was furnished for the purpose of causing, or assisting in causing, the death, suicide, euthanasia, or mercy killing of a person.

“PART D—PROGRAM INTEGRITY AND QUALITY

“SEC. 2131. USE OF AUDITS TO ACHIEVE FISCAL INTEGRITY.

“(a) FINANCIAL AUDITS OF PROGRAM.—

“(1) IN GENERAL.—Each MediGrant plan shall provide for an annual audit of the State’s expenditures from amounts received under this title, in compliance with chapter 75 of title 31, United States Code.

“(2) VERIFICATION AUDITS.—If, after consultation with the State and the Comptroller General and after a fair hearing, the Secretary determines that a State’s audit under paragraph (1) was performed in substantial violation of chapter 75 of title 31, United States Code, the Secretary may—

“(A) require that the State provide for a verification audit in compliance with such chapter, or

“(B) conduct such a verification audit.

“(3) AVAILABILITY OF AUDIT REPORTS.—Within 30 days after completion of each audit or verification audit under this subsection, the State shall—

“(A) provide the Secretary with a copy of the audit report, including the State’s response to any recommendations of the auditor, and

“(B) make the audit report available for public inspection in the same manner as proposed MediGrant plan amendments are made available under section 2105.

“(b) FISCAL CONTROLS.—

“(1) IN GENERAL.—With respect to the accounting and expenditure of funds under this title, each State shall adopt and maintain such fiscal controls, accounting procedures, and data processing safeguards as the State deems reasonably necessary to assure the fiscal integrity of the State’s activities under this title.

“(2) CONSISTENCY WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—Such controls and procedures shall be generally consistent with generally accepted accounting principles as recognized by the Governmental Accounting Standards Board or the Comptroller General.

“(c) AUDITS OF PROVIDERS.—Each MediGrant plan shall provide that the records of any entity providing items or services for which payment may be made under the plan may be audited as necessary to ensure that proper payments are made under the plan.

“SEC. 2132. FRAUD PREVENTION PROGRAM.

“(a) ESTABLISHMENT.—Each MediGrant plan shall provide for the establishment and maintenance of an effective program for the detection and prevention of fraud and abuse by beneficiaries, providers, and others in connection with the operation of the program.

"(b) PROGRAM REQUIREMENTS.—The program established pursuant to subsection (a) shall include at least the following requirements:

"(1) DISCLOSURE OF INFORMATION.—Any disclosing entity (as defined in section 1124(a)) receiving payments under the MediGrant plan shall comply with the requirements of section 1124.

"(2) SUPPLY OF INFORMATION.—An entity (other than an individual practitioner or a group of practitioners) that furnishes, or arranges for the furnishing of, an item or service under the MediGrant plan shall supply upon request specifically addressed to the entity by the Secretary or the State agency the information described in section 1128(b)(9).

"(3) EXCLUSION.—

"(A) IN GENERAL.—The MediGrant plan shall exclude any specified individual or entity from participation in the plan for the period specified by the Secretary when required by the Secretary to do so pursuant to section 1128 or section 1128A, and provide that no payment may be made under the plan with respect to any item or service furnished by such individual or entity during such period.

"(B) AUTHORITY.—In addition to any other authority, a State may exclude any individual or entity for purposes of participating under the MediGrant plan for any reason for which the Secretary could exclude the individual or entity from participation in a program under title XVIII or under section 1128, 1128A, or 1866(b)(2).

"(4) NOTICE.—The MediGrant plan shall provide that whenever a provider of services or any other person is terminated, suspended, or otherwise sanctioned or prohibited from participating under the plan, the State agency responsible for administering the plan shall promptly notify the Secretary and, in the case of a physician, the State medical licensing board of such action.

"(5) ACCESS TO INFORMATION.—The MediGrant plan shall provide that the State will provide information and access to certain information respecting sanctions taken against health care practitioners and providers by State licensing authorities in accordance with section 2133.

"SEC. 2133. INFORMATION CONCERNING SANCTIONS TAKEN BY STATE LICENSING AUTHORITIES AGAINST HEALTH CARE PRACTITIONERS AND PROVIDERS.

"(a) INFORMATION REPORTING REQUIREMENT.—The requirement referred to in section 2132(b)(5) is that the State must provide for the following:

"(1) INFORMATION REPORTING SYSTEM.—The State must have in effect a system of reporting the following information with respect to formal proceedings (as defined by the Secretary in regulations) concluded against a health care practitioner or entity by any authority of the State (or of a political subdivision thereof) responsible for the licensing of health care practitioners (or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners) or entities:

"(A) Any adverse action taken by such licensing authority as a result of the proceeding, including any revocation or suspension of a license (and the length of any such suspension), reprimand, censure, or probation.

"(B) Any dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction.

"(C) Any other loss of the license of the practitioner or entity, whether by operation of law, voluntary surrender, or otherwise.

"(D) Any negative action or finding by such authority, organization, or entity regarding the practitioner or entity.

"(2) ACCESS TO DOCUMENTS.—The State must provide the Secretary (or an entity designated by the Secretary) with access to such documents of the authority described in paragraph (1) as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations described in such paragraph for the purpose of carrying out this Act.

"(b) FORM OF INFORMATION.—The information described in subsection (a)(1) shall be provided to the Secretary (or to an appropriate private or public agency, under suitable arrangements made by the Secretary with respect to receipt, storage, protection of confidentiality, and dissemination of information) in such a form and manner as the Secretary determines to be appropriate in order to provide for activities of the Secretary under this Act and in order to provide, directly or through suitable arrangements made by the Secretary, information—

"(1) to agencies administering Federal health care programs, including private entities administering such programs under contract, "(2) to licensing authorities described in subsection (a)(1),

"(3) to State agencies administering or supervising the administration of State health care programs (as defined in section 1128(h)),

"(4) to utilization and quality control peer review organizations described in part B of title XI and to appropriate entities with contracts under section 1154(a)(4)(C) with respect to eligible organizations reviewed under the contracts,

"(5) to State MediGrant fraud control units (as defined in section 2134),

"(6) to hospitals and other health care entities (as defined in section 431 of the Health Care Quality Improvement Act of 1986), with respect to physicians or other licensed health care practitioners that have entered (or may be entering) into an employment or affiliation relationship with, or have applied for clinical privileges or appointments to the medical staff of, such hospitals or other health care entities (and such information shall be deemed to be disclosed pursuant to section 427 of, and be subject to the provisions of, that Act),

"(7) to the Attorney General and such other law enforcement officials as the Secretary deems appropriate, and

"(8) upon request, to the Comptroller General,

in order for such authorities to determine the fitness of individuals to provide health care services, to protect the health and safety of individuals receiving health care through such programs, and to protect the fiscal integrity of such programs.

"(c) CONFIDENTIALITY OF INFORMATION PROVIDED.—The Secretary shall provide for suitable safeguards for the confidentiality of the information furnished under subsection (a). Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure.

"(d) APPROPRIATE COORDINATION.—The Secretary shall provide for the maximum appropriate coordination in the implementation of subsection (a) of this section and section 422 of the Health Care Quality Improvement Act of 1986.

"SEC. 2134. STATE MEDIGRANT FRAUD CONTROL UNITS.

"(a) IN GENERAL.—Each MediGrant plan shall provide for a State MediGrant fraud control unit described in subsection (b) that effectively carries out the functions and requirements described in such subsection, unless the State demonstrates to the satisfaction of the Secretary that the effective operation of such a unit in the State would not be cost-effective because minimal fraud exists in connection with the provision of covered services to eligible individuals under the plan, and that beneficiaries under the plan will be protected from abuse and neglect in connection with the provision of medical assistance under the plan without the existence of such a unit

"(b) UNITS DESCRIBED.—For purposes of this subsection, the term 'State MediGrant fraud control unit' means a single identifiable entity of the State government which meets the following requirements:

"(1) ORGANIZATION.—The entity—

"(A) is a unit of the office of the State Attorney General or of another department of State government which possesses statewide authority to prosecute individuals for criminal violations;

"(B) is in a State the constitution of which does not provide for the criminal prosecution of individuals by a statewide authority and has formal procedures that—

"(i) assure its referral of suspected criminal violations relating to the program under this title to the appropriate authority or authorities in the State for prosecution, and

"(ii) assure its assistance of, and coordination with, such authority or authorities in such prosecutions; or

"(C) has a formal working relationship with the office of the State Attorney General and has formal procedures (including procedures for its referral of suspected criminal violations to such office) which provide effective coordination of activities between the entity and such office with respect to the detection, investigation, and prosecution of suspected criminal violations relating to the program under this title.

"(2) INDEPENDENCE.—The entity is separate and distinct from any State agency that has principal responsibilities for administering or supervising the administration of the MediGrant plan.

"(3) FUNCTION.—The entity's function is conducting a statewide program for the investigation and prosecution of violations of all applicable State laws regarding any and all aspects of fraud in connection with any aspect of the provision of medical assistance and the activities of providers of such assistance under the MediGrant plan.

"(4) REVIEW OF COMPLAINTS.—The entity has procedures for reviewing complaints of the abuse and neglect of patients of health care facilities which receive payments under the MediGrant plan under this title, and, where appropriate, for acting upon such complaints under the criminal laws of the State or for referring them to other State agencies for action.

"(5) OVERPAYMENTS.—The entity provides for the collection, or referral for collection to a single State agency, of overpayments that are made under the MediGrant plan to health care providers and that are discovered by the entity in carrying out its activities.

"(6) PERSONNEL.—The entity employs such auditors, attorneys, investigators, and other necessary personnel and is organized in such a manner as is necessary to promote the effective and efficient conduct of the entity's activities.

"SEC. 2135. RECOVERIES FROM THIRD PARTIES AND OTHERS.

"(a) THIRD PARTY LIABILITY.—Each MediGrant plan shall provide for reasonable steps—

"(1) to ascertain the legal liability of third parties to pay for care and services available under the plan, including the collection of sufficient information to enable States to pursue claims against third parties; and

"(2) to seek reimbursement for medical assistance provided to the extent legal liability is establish where the amount expected to be recovered exceeds the costs of the recovery.

"(b) BENEFICIARY PROTECTION.—

"(1) IN GENERAL.—Each MediGrant plan shall provide that in the case of a person furnishing services under the plan for which a third party may be liable for payment—

"(A) the person may not seek to collect from the individual (or financially responsible relative) payment of an amount for the service more than could be collected under the plan in the absence of such third party liability, and

"(B) may not refuse to furnish services to such an individual because of a third party's potential liability for payment for the service.

"(2) PENALTY.—A MediGrant plan may provide for a reduction of any payment amount otherwise due with respect to a person who furnishes services under the plan in an amount equal to up to three times the amount of any payment sought to be collected by that person in violation of paragraph (1)(A).

"(c) GENERAL LIABILITY.—The State shall prohibit any health insurer (including a group health plan as defined in section 607 of the Employee Retirement Income Security Act of 1974, a service benefit plan, or a health maintenance organization), in enrolling an individual or in making any payments for benefits to the individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance under a MediGrant plan for any State.

"(d) ACQUISITION OF RIGHTS OF BENEFICIARIES.—To the extent that payment has been made under a MediGrant plan in any case where a third party has a legal liability to make payment for such assistance, the State shall have in effect laws under which, to the extent that payment has been made under the plan for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services.

"(e) ASSIGNMENT OF MEDICAL SUPPORT RIGHTS.—The MediGrant plan shall provide for mandatory assignment of rights of payment for medical support and other medical care owed to recipients in accordance with section 2136.

"(f) REQUIRED LAWS RELATING TO MEDICAL CHILD SUPPORT.—

"(1) IN GENERAL.— Each State with a MediGrant plan shall have in effect the following laws:

"(A) A law that prohibits an insurer from denying enrollment of a child under the health coverage of the child's parent on the ground that—

"(i) the child was born out of wedlock,

"(ii) the child is not claimed as a dependent on the parent's Federal income tax return, or

"(iii) the child does not reside with the parent or in the insurer's service area.

"(B) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an insurer, a law that requires such insurer—

"(i) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

"(ii) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this title or part D of title IV; and

"(iii) not to disenroll (or eliminate coverage of) such a child unless the insurer is provided satisfactory written evidence that—

"(I) such court or administrative order is no longer in effect, or

"(II) the child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of such disenrollment.

"(C) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an employer doing business in the State, a law that requires such employer—

"(i) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

"(ii) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this title or part D of title IV; and

"(iii) not to disenroll (or eliminate coverage of) any such child unless—

"(I) the employer is provided satisfactory written evidence that such court or administrative order is no longer in effect, or the child is or will be enrolled in comparable health coverage which will take effect not later than the effective date of such disenrollment, or

"(II) the employer has eliminated family health coverage for all of its employees; and

"(iv) to withhold from such employee's compensation the employee's share (if any) of premiums for health coverage (except that the amount so withheld may not exceed the maximum amount permitted to be withheld under section 303(b) of the Consumer Credit Protection Act), and to pay such share of premiums to the insurer, except that the Secretary may provide by regulation for appropriate circumstances under which an employer may withhold less than such employee's share of such premiums.

"(D) A law that prohibits an insurer from imposing requirements on a State agency, which has been assigned the rights of an individual eligible for medical assistance under this title and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

"(E) A law that requires an insurer, in any case in which a child has health coverage through the insurer of a noncustodial parent—

"(i) to provide such information to the custodial parent as may be necessary for the child to obtain benefits through such coverage;

"(ii) to permit the custodial parent (or provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent; and

"(iii) to make payment on claims submitted in accordance with clause (ii) directly to such custodial parent, the provider, or the State agency.

"(F) A law that permits the State agency under this title to garnish the wages, salary, or other employment income of, and requires withholding amounts from State tax refunds to, any person who—

"(i) is required by court or administrative order to provide coverage of the costs of health services to a child who is eligible for medical assistance under this title,

"(ii) has received payment from a third party for the costs of such services to such child, but

"(iii) has not used such payments to reimburse, as appropriate, either the other parent or guardian of such child or the provider of such services, to the extent necessary to reimburse the State agency for expenditures for such costs under its plan under this title, but any claims for current or past-due child support shall take priority over any such claims for the costs of such services.

"(2) DEFINITION.—For purposes of this subsection, the term 'insurer' includes a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, a health maintenance organization, and an entity offering a service benefit plan.

"(g) ESTATE RECOVERIES AND LIENS PERMITTED.—A State may take such actions as it considers appropriate to adjust or recover from the individual or the individual's estate any amounts paid as medical assistance to or on behalf of the individual under the MediGrant plan, including through the imposition of liens against the property or estate of the individual.

"SEC. 2136. ASSIGNMENT OF RIGHTS OF PAYMENT.

"(a) IN GENERAL.—For the purpose of assisting in the collection of medical support payments and other payments for medical care owed to recipients of medical assistance under the MediGrant plan, each MediGrant plan shall—

"(1) provide that, as a condition of eligibility for medical assistance under the plan to an individual who has the legal capacity to execute an assignment for himself, the individual is required—

"(A) to assign the State any rights, of the individual or of any other person who is eligible for medical assistance under the plan and on whose behalf the individual has the legal authority to execute an assignment of such rights, to support (specified as support for the purpose of medical care by a court or administrative order) and to payment for medical care from any third party,

"(B) to cooperate with the State (i) in establishing the paternity of such person (referred to in subparagraph (A)) if the person is a child born out of wedlock, and (ii) in obtaining support and payments (described in subparagraph (A)) for himself and for such person, unless (in either case) the individual is pregnant woman or the individual is found to have good cause for refusing to cooperate as determined by the State, and

"(C) to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the plan, unless such individual has good cause for refusing to cooperate as determined by the State; and

"(2) provide for entering into cooperative arrangements (including financial arrangements), with any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, with a State's agency established or designated under section 454(3)) and with appropriate courts and law enforcement officials, to assist the agency or agencies administering the plan with respect to—

"(A) the enforcement and collection of rights to support or payment assigned under this section, and

"(B) any other matters of common concern.

"(b) USE OF AMOUNTS COLLECTED.—Such part of any amount collected by the State under an assignment made under the provisions of this section shall be retained by the State as is necessary to reimburse it for medical assistance payments made on behalf of an individual with respect to whom such assignment was executed (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing of such medical assistance), and the remainder of such amount collected shall be paid to such individual.

"SEC. 2137. QUALITY ASSURANCE STANDARDS FOR NURSING FACILITIES.

"(a) STANDARDS FOR AND CERTIFICATION OF CERTAIN FACILITIES.—

"(1) STANDARDS FOR FACILITIES.—

"(A) IN GENERAL.—Each MediGrant plan shall provide for the establishment and maintenance of standards consistent with the contents described in subparagraph (B) for nursing facilities which furnish services under the plan.

"(B) CONTENTS OF STANDARDS.—The standards established for facilities under this paragraph shall contain provisions relating to the following items:

"(i) The treatment of resident medical records.

"(ii) Policies, procedures, and bylaws for operation.

"(iii) Quality assurance systems.

"(iv) Resident assessment procedures, including care planning and outcome evaluation.

"(vi) The assurance of a safe and adequate physical plant for the facility.

"(vii) Qualifications for staff sufficient to provide adequate care, as defined by the State.

"(viii) Utilization review.

"(ix) The protection and enforcement of resident rights described in subparagraph (C).

"(C) RESIDENT RIGHTS DESCRIBED.—The resident rights described in this subparagraph are the rights of residents to the following:

"(i) To exercise the individual's rights as a resident of the facility and as a citizen or resident of the United States.

"(ii) To receive notice of rights and services.

"(iii) To be protected against the misuse of resident funds.

"(iv) To be provided privacy and confidentiality.

"(v) To voice grievances.

"(vi) To examine the results of State certification program inspections.

"(vii) To refuse to perform services for the facility.

"(viii) To be provided privacy in communications and to receive mail.

"(ix) To have the facility provide immediate access to any resident by any representative of the certification program, the resident's individual physician, the State long term care ombudsman, and any person the resident has designated as a visitor.

"(x) To retain and use personal property.

"(xi) To be free from abuse, including verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

"(xii) To be provided with prior written notice of a pending transfer or discharge.

"(D) PROCESS FOR ESTABLISHMENT.—The standards established by the State for facilities under this paragraph shall be promulgated either through the State's legislative, regulatory, or other process, and may only take effect after the State has provided the public with notice and an opportunity for comment.

"(2) CERTIFICATION PROGRAM.—

"(A) IN GENERAL.—Each MediGrant plan shall provide for the establishment and operation of a program consistent with the requirements of subparagraph (B) for the certification of nursing facilities which meet the standards established under paragraph (1) and the decertification of facilities which fail to meet such standards.

"(B) REQUIREMENTS FOR PROGRAM.—In addition to any other requirements the State may impose, in establishing and operating the certification program under subparagraph (A), the State shall ensure the following:

"(i) The State shall ensure public access (as defined by the State) to the certification program's evaluations of participating facilities, including compliance records and enforcement actions and other reports by the State regarding the ownership, compliance histories, and services provided by certified facilities.

"(ii) Not less often than every 4 years, the State shall audit its expenditures under the program, through an entity designated by the State which is not affiliated with the program, as designated by the State.

"(b) INTERMEDIATE SANCTION AUTHORITY.—

"(1) AUTHORITY.—In addition to any other authority under State law, where a State determines that a nursing facility which is certified for participation under the MediGrant plan no longer substantially meets the requirements for such a facility under this title and further determines that the facility's deficiencies—

"(A) immediately jeopardize the health and safety of its residents, the State shall at least provide for the termination of the facility's certification for participation under the plan, or

"(B) do not immediately jeopardize the health and safety of its residents, the State may, in lieu of providing for terminating the facility's certification for participation under the plan, provide lesser sanctions including one that provides that no payment will be made under the plan with respect to any individual admitted to such facility after a date specified by the State.

"(2) NOTICE.—The State shall not make such a decision with respect to a facility until the facility has had a reasonable opportunity, following the initial determination that it no longer substantially meets the requirements for such a facility under the plan, to correct its deficiencies, and, following this period, has been given reasonable notice and opportunity for a hearing.

"(3) EFFECTIVENESS.—The State's decision to deny payment may be made effective only after such notice to the public and to the facility as may be provided for by the State, and its effectiveness shall terminate (A) when the State finds that the facility is in substantial compliance (or is making good faith efforts to achieve substantial compliance) with the requirements for such a facility under this title, or (B) in the case described in paragraph (1)(B), with the end of the eleventh month following the month such decision is made effective, whichever occurs first. If a facility to which clause (B) of the previous sentence applies still fails to substantially meet the provisions of the respective section on the date specified in such clause, the State shall terminate such facility's certification for participation under the MediGrant plan effective with the first day of the first month following the month specified in such clause.

"SEC. 2138. OTHER PROVISIONS PROMOTING PROGRAM INTEGRITY.

"(a) PUBLIC ACCESS TO SURVEY RESULTS.—Each MediGrant plan shall provide that upon completion of a survey of any health care facility or organization by a State agency to carry out the plan, the agency shall make public in readily available form and place the pertinent findings of the survey relating to the compliance of the facility or organization with requirements of law.

"(b) RECORD KEEPING.—Each MediGrant plan shall provide for agreements with persons or institutions providing services under the plan under which the person or institution agrees—

"(1) to keep such records (including ledgers, books, and original evidence of costs) as are necessary to fully disclose the extent of the services provided to individuals receiving assistance under the plan; and

"(2) to furnish the State agency with such information regarding any payments claimed by such person or institution for providing services under the plan, as the State agency may from time to time request.

"PART E—ESTABLISHMENT AND AMENDMENT OF MEDIGRANT PLANS

"SEC. 2151. SUBMITTAL AND APPROVAL OF MEDIGRANT PLANS.

"(a) SUBMITTAL.—As a condition of receiving funding under part C, each State shall submit to the Secretary a MediGrant plan that meets the applicable requirements of this title.

"(b) APPROVAL.—Except as the Secretary may provide under section 2154, a MediGrant plan submitted under subsection (a)—

"(1) shall be approved for purposes of this title, and

"(2) shall be effective beginning with a calendar quarter that is specified in the plan, but in no case earlier than the first calendar quarter that begins at least 60 days after the date the plan is submitted.

"(c) APPROVAL OF LEGISLATURE FOR SUBMITTAL.—In the case of a State which has a State allotment under section 2121(c)(1) for fiscal year 1996 of more than $10 billion, the State may not submit a MediGrant plan under this section unless the State legislature, by law, has specifically authorized such submittal.

"SEC. 2152. SUBMITTAL AND APPROVAL OF PLAN AMENDMENTS.

"(a) SUBMITTAL OF AMENDMENTS.—A State may amend, in whole or in part, its MediGrant plan at any time through transmittal of a plan amendment under this section.

"(b) APPROVAL.—Except as the Secretary may provide under section 2154, an amendment to a MediGrant plan submitted under subsection (a)—

"(1) shall be approved for purposes of this title, and

"(2) shall be effective as provided in subsection (c).

"(c) EFFECTIVE DATES FOR AMENDMENTS.—

"(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, an amendment to MediGrant plan shall take effect on one or more effective dates specified in the amendment.

"(2) AMENDMENTS RELATING TO ELIGIBILITY OR BENEFITS.—Except as provided in paragraph (4)—

"(A) NOTICE REQUIREMENT.—Any plan amendment that eliminates or restricts eligibility or benefits under the plan may not take effect unless the State certifies that it has provided prior or contemporaneous public notice of the change, in a form and manner provided under applicable State law.

"(B) TIMELY TRANSMITTAL.—Any plan amendment that eliminates or restricts eligibility or benefits under the plan shall not be effective for longer than a 60 day period unless the amendment has been transmitted to the Secretary before the end of such period.

"(3) OTHER AMENDMENTS.—Subject to paragraph (4), any plan amendment that is not described in paragraph (2) becomes effective in a State fiscal year may not remain in effect after the end of such fiscal year (or, if later, the end of the 90-day period on which it becomes effective) unless the amendment has been transmitted to the Secretary.

"(4) EXCEPTION.—The requirements of paragraphs (2) and (3) shall not apply to a plan amendment that is submitted on a timely basis pursuant to a court order or an order of the Secretary.

"SEC. 2153. PROCESS FOR STATE WITHDRAWAL FROM PROGRAM.

"(a) IN GENERAL.—A State may rescind its MediGrant plan and discontinue participation in the program under this title at any time after providing—

"(1) the public with 90 days prior notice in a publication in one or more daily newspapers of general circulation in the State or in any publication used by the State to publish State statutes or rules, and

"(2) the Secretary with 90 days prior written notice.

"(b) EFFECTIVE DATE.—Such discontinuation shall not apply to payments under part C for expenditures made for items and services furnished under the MediGrant plan before the effective date of the discontinuation.

"(c) PRORATION OF ALLOTMENTS.—In the case of any withdrawal under this section other than at the end of a Federal fiscal year, notwithstanding any provision of section 2121 to the contrary, the Secretary shall provide for such appropriate proration of the application of allotments under section 2121 as is appropriate.

"SEC. 2154. SANCTIONS FOR SUBSTANTIAL NONCOMPLIANCE.

"(a) PROMPT REVIEW OF PLAN SUBMITTALS.—The Secretary shall promptly review MediGrant plans and plan amendments submitted under this part to determine if they substantially comply with the requirements of this title.

"(b) DETERMINATIONS OF SUBSTANTIAL NONCOMPLIANCE.—

"(1) AT TIME OF PLAN OR AMENDMENT SUBMITTAL.—

"(A) IN GENERAL.—If the Secretary, during the 30-day period beginning on the date of submittal of a MediGrant plan or plan amendment—

"(i) determines that the plan or amendment substantially violates (within the meaning of subsection (c)) a requirement of this title, and

"(ii) provides written notice of such determination to the State,

the Secretary shall issue an order specifying that the plan or amendment, insofar as it is in substantial violation of such a requirement, shall not be effective, except as provided in subsection (c), beginning at the end of a period of not less than 30 days, or 120 days in the case of the initial submission of the MediGrant plan) specified in the order beginning on the date of the notice of the determination.

"(B) EXTENSION OF TIME PERIODS.—The time periods specified in subparagraph (A) may be extended by written agreement of the Secretary and the State involved.

"(2) VIOLATIONS IN ADMINISTRATION OF PLAN.—

"(A) IN GENERAL.—If the Secretary determines, after reasonable notice and opportunity for a hearing for the State, that in the administration of a MediGrant plan there is a substantial violation of a requirement of this title, the Secretary shall provide the State with written notice of the determination and with an order to remedy such violation. Such an order shall become effective prospectively, as specified in the order, after the date of receipt of such written notice. Such an order may include the withholding of funds, consistent with subsection (f), for parts of the MediGrant plan affected by such violation, until the Secretary is satisfied that the violation has been corrected.

"(B) EFFECTIVENESS.—If the Secretary issues an order under paragraph (1), the order shall become effective, except as provided in subsection (c), beginning at the end of a period (of not less than 30 days) specified in the order beginning on the date of the notice of the determination to the State.

"(C) TIMELINESS OF DETERMINATIONS RELATING TO REPORT-BASED COMPLIANCE.—The Secretary shall make determinations under this paragraph respecting violations relating to information contained in an annual report under section 2102, an independent evaluation under section 2103, or an audit report under section 2131 not later than 30 days after the date of transmittal of the report or evaluation to the Secretary.

"(3) CONSULTATION WITH STATE.—Before making a determination adverse to a State under this section, the Secretary shall (within any time periods provided under this section)—

"(A) reasonably consult with the State involved,

"(B) offer the State a reasonable opportunity to clarify the submission and submit further information to substantiate compliance with the requirements of this title, and

"(C) reasonably consider any such clarifications and information submitted.

"(4) JUSTIFICATION OF ANY INCONSISTENCIES IN DETERMINATIONS.—If the Secretary makes a determination under this section that is, in whole or in part, inconsistent with any previous determination issued by the Secretary under this title, the Secretary shall include in the determination a detailed explanation and justification for any such difference.

"(5) SUBSTANTIAL VIOLATION DEFINED.—For purposes of this title, a MediGrant plan (or amendment to such a plan) or the administration of the MediGrant plan is considered to 'substantially violate' a requirement of this title if a provision of the plan or amendment (or an omission from the plan or amendment) or the administration of the plan—

"(A) is material and substantial in nature and effect, and

"(B) is inconsistent with an express requirement of this title.

A failure to meet a strategic objective or performance goal (as described in section 2101) shall not be considered to substantially violate a requirement of this title.

"(c) STATE RESPONSE TO ORDERS.—

"(1) STATE RESPONSE BY REVISING PLAN.—

"(A) IN GENERAL.—Insofar as an order under subsection (b)(1) relates to a substantial violation by a MediGrant plan or plan amendment, a State may respond (before the date the order becomes effective) to such an order by submitting a written revision of the plan or plan amendment to substantially comply with the requirements of this part.

"(B) REVIEW OF REVISION.—In the case of submission of such a revision, the Secretary shall promptly review the submission and shall withhold any action on the order during the period of such review.

"(C) SECRETARIAL RESPONSE.—The revision shall be considered to have corrected the deficiency (and the order rescinded insofar as it relates to such deficiency) unless the Secretary determines and notifies the State in writing, within 15 days after the date the Secretary receives the revision, that the plan or amendment, as proposed to be revised, still substantially violates a requirement of this title. In such case the State may respond by seeking reconsideration or a hearing under paragraph (2).

"(D) REVISION RETROACTIVE.—If the revision provides for substantial compliance, the revision may be treated, at the option of the State, as being effective either as of the effective date of the provision to which it relates or such later date as the State and Secretary may agree.

"(2) STATE RESPONSE BY SEEKING RECONSIDERATION OR AN ADMINISTRATIVE HEARING.—A State may respond to an order under subsection (b) by filing a request with the Secretary for—

"(A) a reconsideration of the determination, pursuant to subsection (d)(1), or

"(B) a review of the determination through an administrative hearing, pursuant to subsection (d)(2).

In such case, the order shall not take effect before the completion of the reconsideration or hearing.

"(3) STATE RESPONSE BY CORRECTIVE ACTION PLAN.—

"(A) IN GENERAL.—In the case of an order described in subsection (b)(2) that relates to a substantial violation in the administration of the MediGrant plan, a State may respond to such an order by submitting a corrective action plan with the Secretary to correct deficiencies in the administration of the plan which are the subject of the order.

"(B) REVIEW OF CORRECTIVE ACTION PLAN.—In such case, the Secretary shall withhold any action on the order for a period (not to exceed 30 days) during which the Secretary reviews the corrective action plan.

"(C) SECRETARIAL RESPONSE.—The corrective action plan shall be considered to have corrected the deficiency (and the order rescinded insofar as it relates to such deficiency) unless the Secretary determines and notifies the State in writing, within 15 days after the date the Secretary receives the corrective action plan, that the State's administration of the MediGrant plan, as proposed to be corrected in the plan, will still substantially violate a requirement of this title. In such case the State may respond by seeking reconsideration or a hearing under paragraph (2).

"(4) STATE RESPONSE BY WITHDRAWAL OF PLAN AMENDMENT; FAILURE TO RESPOND.—Insofar as an order relates to a substantial violation in a plan amendment submitted, a State may respond to such an order by withdrawing the plan amendment and the MediGrant plan shall be treated as though the amendment had not been made.

"(d) ADMINISTRATIVE REVIEW AND HEARING.—

"(1) RECONSIDERATION.—Within 30 days after the date of receipt of a request under subsection (b)(2)(A), the Secretary shall notify the State of the time and place at which a hearing will be held for the purpose of reconsidering the Secretary's determination. The hearing shall be held not less than 20 days nor more than 60 days after the date notice of the hearing is furnished to the State, unless the Secretary and the State agree in writing to holding the hearing at another time. The Secretary shall affirm, modify, or reverse the original determination within 60 days of the conclusion of the hearing.

"(2) ADMINISTRATIVE HEARING.—Within 30 days after the date of receipt of a request under subsection (b)(2)(B), an administrative law judge shall schedule a hearing for the purpose of reviewing the Secretary's determination. The hearing shall be held not less than 20 days nor more than 60 days after the date notice of the hearing is furnished to the State, unless the Secretary and the State agree in writing to holding the hearing at another time. The administrative law judge shall affirm, modify, or reverse the determination within 60 days of the conclusion of the hearing.

"(e) JUDICIAL REVIEW.—

"(1) IN GENERAL.—A State which is dissatisfied with a final determination made by the Secretary under subsection (d)(1) or a final determination of an administrative law judge under subsection (d)(2) may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which the State is located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary and, in the case of a determination under subsection (d)(2), to the administrative law judge involved. The Secretary (or judge involved) thereupon shall file in the court the record of the proceedings on which the final determination was based, as provided in section 2112 of title 28, United States Code.

"(2) STANDARD FOR REVIEW.—The findings of fact by the Secretary or administrative law judge, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary or judge to take further evidence, and the Secretary or judge may thereupon make new or modified findings of fact and may modify a previous determination, and shall certify to the court the transcript and record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(3) JURISDICTION OF APPELLATE COURT.—The court shall have jurisdiction to affirm the action of the Secretary or judge or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"(f) WITHHOLDING OF FUNDS.—

"(1) IN GENERAL.—Any order under this section relating to the withholding of funds shall be effective not earlier than the effective date of the order and shall only relate to the portions of a MediGrant plan or administration thereof which substantially violate a requirement of this title. In the case of a failure to meet a set-aside requirement under section 2112, any withholding shall only apply to the extent of such failure.

"(2) SUSPENSION OF WITHHOLDING.—The Secretary may suspend withholding of funds under paragraph (1) during the period reconsideration or administrative and judicial review is pending under subsection (d) or (e).

"(3) RESTORATION OF FUNDS.—Any funds withheld under this subsection under an order shall be immediately restored to a State—

"(A) to the extent and at the time the order is—

"(i) modified or withdrawn by the Secretary upon reconsideration,

"(ii) modified or reversed by an administrative law judge, or

"(iii) set aside (in whole or in part) by an appellate court; or

"(B) when the Secretary determines that the deficiency which was the basis for the order is corrected;

“(C) when the Secretary determines that violation which was the basis for the order is resolved or the amendment which was the basis for the order is withdrawn; or

“(D) at any time upon the initiative of the Secretary.

“SEC. 2155. SECRETARIAL AUTHORITY.

“(a) NEGOTIATED AGREEMENT AND DISPUTE RESOLUTION.—

“(1) NEGOTIATIONS.—Nothing in this part shall be construed as preventing the Secretary and a State from at any time negotiating a satisfactory resolution to any dispute concerning the approval of a MediGrant plan (or amendments to a MediGrant plan) or the compliance of a MediGrant plan (including its administration) with requirements of this title.

“(2) COOPERATION.—The Secretary shall act in a cooperative manner with the States in carrying out this title. In the event of a dispute between a State and the Secretary, the Secretary shall, whenever practicable, engage in informal dispute resolution activities in lieu of formal enforcement or sanctions under section 2154.

“(b) LIMITATIONS ON DELEGATION OF DECISION-MAKING AUTHORITY.—The Secretary may not delegate (other than to the Administrator of the Health Care Financing Administration) the authority to make determinations or reconsiderations respecting the approval of MediGrant plans (or amendments to such plans) or the compliance of a MediGrant plan (including its administration) with requirements of this title. Such Administrator may not further delegate such authority to any individual, including any regional official of such Administration.

“(c) REQUIRING FORMAL RULEMAKING FOR CHANGES IN SECRETARIAL ADMINISTRATION.—The Secretary shall carry out the administration of the program under this title only through a prospective formal rulemaking process, including issuing notices of proposed rule making, publishing proposed rules or modifications to rules in the Federal Register, and soliciting public comment.

“PART F—GENERAL PROVISIONS

“SEC. 2171. DEFINITIONS.

“(a) MEDICAL ASSISTANCE.—

“(1) IN GENERAL.—For purposes of this title, except as provided in paragraph (2), the term ‘medical assistance’ means payment of part or all the cost of any of the following for eligible low-income individuals (as defined in subsection (b)) as specified under the MediGrant plan:

“(A) Inpatient hospital services.

“(B) Outpatient hospital services.

“(C) Physician services.

“(D) Surgical services.

“(E) Clinic services and other ambulatory health care services.

“(F) Nursing facility services.

“(G) Intermediate care facility services for the mentally retarded.

“(H) Prescription drugs and biologicals.

“(I) Over-the-counter medications.

“(J) Laboratory and radiological services.

“(K) Family planning services and supplies.

“(L) Inpatient mental health services, including services furnished in a State-operated mental hospital and including residential or other 24-hour therapeutically planned structured services in the case of a child.

“(M) Outpatient mental health services, including services furnished in a State-operated mental hospital and including community-based services in the case of a child.

“(N) Durable medical equipment and other medically-related or remedial devices (such as prosthetic devices, implants, eyeglasses, hearing aids, dental devices, and adaptive devices).

“(O) Disposable medical supplies.

“(P) Home and community-based health care services and related supportive services (such as home health nursing services, home health aide services, personal care, assistance with activities of daily living, chore services, day care services, respite care services, and training for family members).

“(Q) Community supported living arrangements.

“(R) Nursing care services (such as private duty nursing care, nurse midwife services, respiratory care services, pediatric nurse services, and advanced practice nurse services) in a home, school, or other setting.

“(S) Dental services.

“(T) Inpatient substance abuse treatment services and residential substance abuse treatment services.

“(U) Outpatient substance abuse treatment services.

“(V) Case management services.

“(W) Care coordination services.

“(X) Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.

“(Y) Hospice care.

“(Z) Any other medical, diagnostic, screening, preventive, restorative, remedial, therapeutic, or rehabilitative services (whether in a facility, home, school, or other setting) if recognized by State law and if the service is—

“(i) prescribed by or furnished by a physician or other licensed or registered practitioner within the scope of practice as defined by State law,

“(ii) performed under the general supervision or at the direction of a physician, or

“(iii) furnished by a health care facility that is operated by a State or local government or is licensed under State law and operating within the scope of the license.

“(AA) Premiums for private health care insurance coverage, including private long-term care insurance coverage.

“(BB) Medical transportation.

“(CC) Medicare cost-sharing (as defined in subsection (c)).

“(DD) Enabling services (such as transportation, translation, and outreach services) designed to increase the accessibility of primary and preventive health care services for eligible low-income individuals.

“(EE) Any other health care services or items specified by the Secretary.

“(2) EXCLUSION OF CERTAIN PAYMENTS.—Such term does not include the payment with respect to care or services for—

“(A) any individual who is an inmate of a public institution (except as a patient in a State psychiatric hospital); and

“(B) any individual who is not an eligible low-income individual.

“(b) ELIGIBLE LOW-INCOME INDIVIDUAL.—The term ‘eligible low-income individual’ means an individual who has been determined eligible by the State for medical assistance under the MediGrant plan and whose family income (as determined under the plan) does not exceed a percentage (specified in the MediGrant plan and not to exceed 300 percent) of the poverty line for a family of the size involved. In determining the amount of income under the previous sentence, a State may exclude costs incurred for medical care or other types of remedial care recognized by the State.

“(c) MEDICARE COST-SHARING.—For purposes of this title, the term ‘medicare cost-sharing’ means any of the following:

“(1)(A) Premiums under section 1839.

“(B) Premiums under section 1818 or 1818A.

“(2) Coinsurance under title XVIII (including coinsurance described in section 1813).

“(3) Deductibles established under title XVIII (including those described in section 1813 and section 1833(b)).

“(4) The difference between the amount that is paid under section 1833(a) and the amount that would be paid under such section if any reference to ‘80 percent’ therein were deemed a reference to ‘100 percent’.

“(5) Premiums for enrollment of an individual with an eligible organization under section 1876 or with a MedicarePlus organization under part C of title XVIII.

“(d) ADDITIONAL DEFINITIONS.—For purposes of this title:

“(1) CHILD.—The term ‘child’ means an individual under 19 years of age.

“(2) POVERTY LINE DEFINED.—The term ‘poverty line’ means the income official poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981).

“(3) PREGNANT WOMAN.—The term ‘pregnant woman’ includes a woman during the 60-day period beginning on the last day of the pregnancy.

"SEC. 2172. TREATMENT OF TERRITORIES.

"Notwithstanding any other requirement of this title, the Secretary may waive or modify any requirement of this title with respect to the medical assistance program a State other than the 50 States and the District of Columbia, other than a waiver of—

"(1) the applicable Federal medical assistance percentage,

"(2) the limitation on total payments in a fiscal year to the amount of the allotment under section 2121(c), or

"(3) the requirement that payment may be made for medical assistance only with respect to amounts expended by the State for care and services described in paragraph (1) of section 2171(a) and medically-related services (as defined in section 2112(e)(2)).

"SEC. 2173. DESCRIPTION OF TREATMENT OF INDIAN HEALTH SERVICE FACILITIES.

"In the case of a State in which one or more facilities of the Indian Health Service are located, the MediGrant plan shall include a description of—

"(1) what provision (if any) has been made for payment for items and services furnished by such facilities, and

"(2) the manner in which medical assistance for low-income eligible individuals who are Indians will be provided, as determined by the State in consultation with the appropriate Indian tribes and tribal organizations.

"SEC. 2174. APPLICATION OF CERTAIN GENERAL PROVISIONS.

"The following sections in part A of title XI shall apply to States under this title in the same manner as they applied to a State under title XIX:

"(1) Section 1101(a)(1) (relating to definition of State).

"(2) Section 1116 (relating to administrative and judicial review), but only insofar as consistent with the provisions of part C.

"(3) Section 1124 (relating to disclosure of ownership and related information).

"(4) Section 1126 (relating to disclosure of information about certain convicted individuals).

"(5) Section 1132 (relating to periods within which claims must be filed).

"SEC. 2175. MEDIGRANT MASTER DRUG REBATE AGREEMENTS.

"(a) REQUIREMENT FOR MANUFACTURER TO ENTER INTO AGREEMENT.—

"(1) IN GENERAL.—Pursuant to section 2123(f), in order for payment to be made to a State under part C for medical assistance for covered outpatient drugs of a manufacturer, the manufacturer shall enter into and have in effect an MediGrant master rebate agreement described in subsection (b) with the Secretary on behalf of States electing to participate in the agreement.

"(2) STATE PARTICIPATION IN MASTER AGREEMENT OPTIONAL.—Nothing in this section shall be construed to—

"(A) require a State to participate in an MediGrant master rebate agreement under this section; or

"(B) prohibit a State from entering into an agreement with a manufacturer of covered outpatient drugs (under such terms as the State and manufacturer may agree upon) regarding the amount of payment for such drugs under the MediGrant plan.

"(3) COVERAGE OF DRUGS NOT COVERED UNDER REBATE AGREEMENTS.—Nothing in this section shall be construed to prohibit a State in its discretion from providing coverage under its MediGrant plan of a covered outpatient drug for which no rebate agreement is in effect under this section.

"(4) EFFECT ON EXISTING AGREEMENTS.—If a State has a rebate agreement in effect with a manufacturer on the date of the enactment of this section which provides for a minimum aggregate rebate equal to or greater than the minimum aggregate rebate which would otherwise be paid under the MediGrant master agreement under this section, at the option of the State—

"(A) such agreement shall be considered to meet the requirements of the MediGrant master rebate agreement; and

"(B) the State shall be considered to have elected to participate in the MediGrant master rebate agreement.

"(b) TERMS OF REBATE AGREEMENT.—

"(1) PERIODIC REBATES.—The MediGrant master rebate agreement under this section shall require the manufacturer to provide, to the MediGrant plan of each State participating in the agreement, a rebate for a rebate period in an amount specified in subsection (c) for covered outpatient drugs of the manufacturer dispensed after the effective date of the agreement, for which payment was made under the plan for such period. Such rebate shall be paid by the manufacturer not later than 30 days after the date of receipt of the information described in paragraph (2) for the period involved.

"(2) STATE PROVISION OF INFORMATION.—

"(A) STATE RESPONSIBILITY.—Each State participating in the MediGrant master rebate agreement shall report to each manufacturer not later than 60 days after the end of each rebate period and in a form consistent with a standard reporting format established by the Secretary, information on the total number of units of each dosage form and strength and package size of each covered outpatient drug, for which payment was made under the MediGrant plan for the period, and shall promptly transmit a copy of such report to the Secretary.

"(B) AUDITS.—A manufacturer may audit the information provided (or required to be provided) under subparagraph (A). Adjustments to rebates shall be made to the extent that information indicates that utilization was greater or less than the amount previously specified.

"(3) MANUFACTURER PROVISION OF PRICE INFORMATION.—

"(A) IN GENERAL.—Each manufacturer which is subject to the MediGrant master rebate agreement under this section shall report to the Secretary—

"(i) not later than 30 days after the last day of each rebate period under the agreement (beginning on or after January 1, 1991), on the average manufacturer price (as defined in subsection (i)(1)) and, for single source drugs and innovator multiple source drugs, the manufacturer's best price (as defined in subsection (c)(1)(C)) for each covered outpatient drug for the rebate period under the agreement, and

"(ii) not later than 30 days after the date of entering into an agreement under this section, on the average manufacturer price (as defined in subsection (i)(1)) as of October 1, 1990, for each of the manufacturer's covered outpatient drugs.

"(B) VERIFICATION SURVEYS OF AVERAGE MANUFACTURER PRICE.—The Secretary may survey wholesalers and manufacturers that directly distribute their covered outpatient drugs, when necessary, to verify manufacturer prices reported under subparagraph (A). The Secretary may impose a civil monetary penalty in an amount not to exceed $10,000 on a wholesaler, manufacturer, or direct seller, if the wholesaler, manufacturer, or direct seller of a covered outpatient drug refuses a request for information by the Secretary in connection with a survey under this subparagraph. The provisions of section 1128A (other than subsections (a) (with respect to amounts of penalties or additional assessments) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(C) PENALTIES.—

"(i) FAILURE TO PROVIDE TIMELY INFORMATION.—In the case of a manufacturer which is subject to the MediGrant master rebate agreement that fails to provide information required under subparagraph (A) on a timely basis, the amount of the penalty shall be $10,000 for each day in which such information has not been provided and such amount shall be paid to the Treasury. If such information is not reported within 90 days of the deadline imposed, the agreement shall be suspended for services furnished after the end of such 90-day period and until the date such information is reported (but in no case shall such suspension be for a period of less than 30 days).

"(ii) FALSE INFORMATION.—Any manufacturer which is subject to the MediGrant master rebate agreement, or a wholesaler or direct seller, that knowingly provides false information under subparagraph (A) or (B) is subject to a civil money penalty in an amount not to exceed $100,000 for each item of false information. Any such civil money penalty shall be in addition to other penalties as may be prescribed by law. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(D) CONFIDENTIALITY OF INFORMATION.—Notwithstanding any other provision of law, information disclosed by manufacturers or wholesalers under this paragraph or under an agreement with the Secretary of Veterans Affairs described in section 2123(f) is confidential and shall not be disclosed by the Secretary or the Secretary of Veterans Affairs or a State agency (or contractor therewith) in a form which discloses the identity of a specific manufacturer or wholesaler or the prices charged for drugs by such manufacturer or wholesaler, except—

"(i) as the Secretary determines to be necessary to carry out this section,

"(ii) to permit the Comptroller General to review the information provided, and

"(iii) to permit the Director of the Congressional Budget Office to review the information provided.

"(4) LENGTH OF AGREEMENT.—

"(A) IN GENERAL.—The MediGrant master rebate agreement under this section shall be effective for an initial period of not less than 1 year and shall be automatically renewed for a period of not less than one year unless terminated under subparagraph (B).

"(B) TERMINATION.—

"(i) BY THE SECRETARY.—The Secretary may provide for termination of the MediGrant master rebate agreement with respect to a manufacturer for violation of the requirements of the agreement or other good cause shown. Such termination shall not be effective earlier than 60 days after the date of notice of such termination. The Secretary shall provide, upon request, a manufacturer with a hearing concerning such a termination, but such hearing shall not delay the effective date of the termination. Failure of a State to provide any advance notice of such a termination as required by regulation shall not affect the State's right to terminate coverage of the drugs affected by such termination as of the effective date of such termination.

"(ii) BY A MANUFACTURER.—A manufacturer may terminate its participation in the MediGrant master rebate agreement under this section for any reason. Any such termination shall not be effective until the calendar quarter beginning at least 60 days after the date the manufacturer provides notice to the Secretary.

"(iii) EFFECTIVENESS OF TERMINATION.—Any termination under this subparagraph shall not affect rebates due under the agreement before the effective date of its termination.

"(iv) NOTICE TO STATES.—In the case of a termination under this subparagraph, the Secretary shall provide notice of such termination to the States within not less than 30 days before the effective date of such termination.

"(v) APPLICATION TO TERMINATIONS OF OTHER AGREEMENTS.—The provisions of this subparagraph shall apply to the terminations of master agreements described in section 8126(a) of title 38, United States Code.

"(C) DELAY BEFORE REENTRY.—In the case of any rebate agreement with a manufacturer under this section which is terminated, another such agreement with the manufacturer (or a successor manufacturer) may not be entered into until a period of 1 calendar quarter has elapsed since the date of the termination, unless the Secretary finds good cause for an earlier reinstatement of such an agreement.

"(c) DETERMINATION OF AMOUNT OF REBATE.—

"(1) BASIC REBATE FOR SINGLE SOURCE DRUGS AND INNOVATOR MULTIPLE SOURCE DRUGS.—

"(A) IN GENERAL.—Except as provided in paragraph (2), the amount of the rebate specified in this subsection with respect to a State participating in the MediGrant master rebate agreement for a rebate period (as defined in subsection (i)(8)) with respect to each dosage form and strength of a single source drug or an innovator multiple source drug shall be equal to the product of—

"(i) the total number of units of each dosage form and strength paid for under the State plan in the rebate period (as reported by the State); and

"(ii) the greater of—

"(I) the difference between the average manufacturer price and the best price (as defined in subparagraph (C)) for the dosage form and strength of the drug, or

"(II) the minimum rebate percentage (specified in subparagraph (B)) of such average manufacturer price,

for the rebate period.

"(B) MINIMUM REBATE PERCENTAGE.—For purposes of subparagraph (A)(ii)(II), the 'minimum rebate percentage' is 15.1 percent.

"(C) BEST PRICE DEFINED.—For purposes of this section—

"(i) IN GENERAL.—The term 'best price' means, with respect to a single source drug or innovator multiple source drug of a manufacturer, the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States, excluding—

"(I) any prices charged on or after October 1, 1992, to the Indian Health Service, the Department of Veterans Affairs, a State home receiving funds under section 1741 of title 38, United States Code, the Department of Defense, the Public Health Service, or a covered entity described in section 340B(a)(4) of the Public Health Service Act;

"(II) any prices charged under the Federal Supply Schedule of the General Services Administration;

"(III) any prices used under a State pharmaceutical assistance program; and

"(IV) any depot prices and single award contract prices, as defined by the Secretary, of any agency of the Federal Government.

"(ii) SPECIAL RULES.—The term 'best price'—

"(I) shall be inclusive of cash discounts, free goods that are contingent on any purchase requirement, volume discounts, and rebates (other than rebates under this section);

"(II) shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package;

"(III) shall not take into account prices that are merely nominal in amount; and

"(IV) shall exclude rebates paid under this section or any other rebates paid to a State participating in the MediGrant master rebate agreement.

"(2) ADDITIONAL REBATE FOR SINGLE SOURCE AND INNOVATOR MULTIPLE SOURCE DRUGS.—

"(A) IN GENERAL.—The amount of the rebate specified in this subsection with respect to a State participating in the MediGrant master rebate agreement for a rebate period, with respect to each dosage form and strength of a single source drug or an innovator multiple source drug, shall be increased by an amount equal to the product of—

"(i) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the MediGrant plan for the rebate period; and

"(ii) the amount (if any) by which—

"(I) the average manufacturer price for the dosage form and strength of the drug for the period, exceeds

"(II) the average manufacturer price for such dosage form and strength for the calendar quarter beginning July 1, 1990 (without regard to whether or not the drug has been sold or transferred to an entity, including a division or subsidiary of the manufacturer, after the first day of such quarter), increased by the percentage by which the consumer price index for all urban consumers (United States city average) for the month before the month in which the rebate period begins exceeds such index for September 1990.

"(B) TREATMENT OF SUBSEQUENTLY APPROVED DRUGS.—In the case of a covered outpatient drug approved by the Food and Drug Administration after October 1, 1990, clause (ii)(II) of subparagraph (A) shall be applied by substituting 'the first full calendar quarter after the day on which the drug was first marketed' for 'the calendar quarter beginning July 1, 1990' and 'the month prior to the first month of the first full calendar quarter after the day on which the drug was first marketed' for 'September 1990'.

"(3) REBATE FOR OTHER DRUGS.—

"(A) IN GENERAL.—The amount of the rebate paid to a State participating in the MediGrant master rebate agreement for a rebate period with respect to each dosage form and strength of covered outpatient drugs (other than single source drugs and innovator multiple source drugs) shall be equal to the product of—

"(i) the applicable percentage (as described in subparagraph (B)) of the average manufacturer price for the dosage form and strength for the rebate period, and "(ii) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the MediGrant plan for the rebate period.

"(B) APPLICABLE PERCENTAGE DEFINED.—For purposes of subparagraph (A)(i), the 'applicable percentage' is 11 percent.

"(4) LIMITATION ON AMOUNT OF REBATE TO AMOUNTS PAID FOR CERTAIN DRUGS.—Upon request of a manufacturer of a covered outpatient drug for which a majority of the estimated number of units of such dosage form and strength that are subject to rebates under this section were dispensed to inpatients of nursing facilities (including drugs which are exempt from the requirements of the MediGrant master rebate agreement under this section under subsection (h)(1)(B)), the Secretary shall limit the amount of the rebate under this subsection with respect to a dosage form and strength of the drug for a rebate period to the amount paid under the MediGrant plan with respect to such dosage form and strength of the drug in the rebate period (without consideration of any dispensing fees paid).

"(d) LIMITATIONS ON COVERAGE OF DRUGS BY STATES PARTICIPATING IN MASTER AGREEMENT.—

"(1) PERMISSIBLE RESTRICTIONS.—A State participating in the MediGrant master rebate agreement under this section may—

"(A) subject to prior authorization under its MediGrant plan any covered outpatient drug so long as any such prior authorization program complies with the requirements of paragraph (5); and

"(B) exclude or otherwise restrict coverage under its plan of a covered outpatient drug if—

"(i) the prescribed use is not for a medically accepted indication (as defined in subsection (i)(5));

"(ii) the drug is contained in the list referred to in paragraph (2);

"(iii) the drug is subject to such restrictions pursuant to the MediGrant master rebate agreement or any agreement described in subsection (a)(4); or

"(iv) the State has excluded coverage of the drug from its formulary established in accordance with paragraph (4).

"(2) LIST OF DRUGS SUBJECT TO RESTRICTION.—The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted by a State participating in the MediGrant master rebate agreement:

"(A) Agents when used for anorexia, weight loss, or weight gain.

"(B) Agents when used to promote fertility.

"(C) Agents when used for cosmetic purposes or hair growth.

"(D) Agents when used for the symptomatic relief of cough and colds.

"(E) Agents when used to promote smoking cessation.

"(F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

"(G) Nonprescription drugs.

"(H) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.

"(I) Barbiturates.

"(J) Benzodiazepines.

"(3) ADDITIONS TO DRUG LISTINGS.—The Secretary shall, by regulation, periodically update the list of drugs or classes of drugs described in paragraph (2), or their medical uses, which the Secretary has determined to be subject to clinical abuse or inappropriate use.

"(4) REQUIREMENTS FOR FORMULARIES.—A State participating in the MediGrant master rebate agreement may establish a formulary if the formulary meets the following requirements:

"(A) The formulary is developed by a committee consisting of physicians, pharmacists, and other appropriate individuals appointed by the Governor of the State.

"(B) Except as provided in subparagraph (C), the formulary includes the covered outpatient drugs of any manufacturer which has entered into and complies with the agreement under subsection (a) (other than any drug excluded from coverage or otherwise restricted under paragraph (2)).

"(C) A covered outpatient drug may be excluded with respect to the treatment of a specific disease or condition for an identified population (if any) only if, based on the drug's labeling (or, in the case of a drug the prescribed use of which is not approved under the Federal Food, Drug, and Cosmetic Act but is a medically accepted indication, based on information from the appropriate compendia described in subsection (i)(5)), the excluded drug does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome of such treatment for such population over other drugs included in the formulary and there is a written explanation (available to the public) of the basis for the exclusion.

"(D) The State plan permits coverage of a drug excluded from the formulary (other than any drug excluded from coverage or otherwise restricted under paragraph (2)) pursuant to a prior authorization program that is consistent with paragraph (5).

"(E) The formulary meets such other requirements as the Secretary may impose in order to achieve program savings consistent with protecting the health of program beneficiaries.

A prior authorization program established by a State under paragraph (5) is not a formulary subject to the requirements of this paragraph.

"(5) REQUIREMENTS OF PRIOR AUTHORIZATION PROGRAMS.—The MediGrant plan of a State participating in the MediGrant master rebate agreement may require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (i)(5)) only if the system providing for such approval—

"(A) provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization; and

"(B) except with respect to the drugs on the list referred to in paragraph (2), provides for the dispensing of at least 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

"(6) OTHER PERMISSIBLE RESTRICTIONS.—A State participating in the MediGrant master rebate agreement may impose limitations, with respect to all such drugs in a therapeutic class, on the minimum or maximum quantities per prescription or on the number of refills, if such limitations are necessary to discourage waste, and may address instances of fraud or abuse by individuals in any manner authorized under this Act.

"(e) DRUG USE REVIEW.—

"(1) IN GENERAL.—A State participating in the MediGrant master rebate agreement may provide for a drug use review program to educate physicians and pharmacists to identify and reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists, and patients, or associated with specific drugs or groups of drugs, as well as potential and actual severe adverse reactions to drugs.

"(2) APPLICATION OF STATE STANDARDS.—A State with a drug use review program under this subsection shall establish and operate the program under such standards as it may establish.

"(f) ELECTRONIC CLAIMS MANAGEMENT.—In accordance with chapter 35 of title 44, United States Code (relating to coordination of Federal information policy), the Secretary shall encourage each State to establish, as its principal means of processing claims for covered outpatient drugs under its MediGrant plan, a point-of-sale electronic claims management system, for the purpose of performing on-line, real time eligibility verifications, claims data capture, adjudication of claims, and assisting pharmacists (and other authorized persons) in applying for and receiving payment.

"(g) ANNUAL REPORT.—

"(1) IN GENERAL.—Not later than May 1 of each year, the Secretary shall transmit to the Committee on Finance of the Senate, the Committee on Commerce of the House of Representatives, and the Committee on Aging of the Senate a report on the operation of this section in the preceding fiscal year.

"(2) DETAILS.—Each report shall include information on—

"(A) ingredient costs paid under this title for single source drugs, multiple source drugs, and nonprescription covered outpatient drugs;

"(B) the total value of rebates received and number of manufacturers providing such rebates;

"(C) the effect of inflation on the value of rebates required under this section;

"(D) trends in prices paid under this title for covered outpatient drugs; and

"(E) Federal and State administrative costs associated with compliance with the provisions of this title.

"(h) EXEMPTION FOR CAPITATED HEALTH CARE ORGANIZATIONS, HOSPITALS, AND NURSING FACILITIES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the requirements of the MediGrant master rebate agreement under this section shall not apply with respect to covered outpatient drugs dispensed by or through—

"(A) a capitated health care organization (as defined in section 2114(c)(1)); or

"(B) a hospital or nursing facility that dispenses covered outpatient drugs using a drug formulary system and bills the State no more than the hospital's purchasing costs for covered outpatient drugs.

"(2) CONSTRUCTION IN DETERMINING BEST PRICE.—Nothing in paragraph (1) shall be construed as excluding amounts paid by the entities described in such paragraph for covered outpatient drugs from the determination of the best price (as defined in subsection (c)(1)(C)) for such drugs.

"(i) DEFINITIONS.—In the section—

"(1) AVERAGE MANUFACTURER PRICE.—The term 'average manufacturer price' means, with respect to a covered outpatient drug of a manufacturer for a rebate period, the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade, after deducting customary prompt pay discounts.

"(2) COVERED OUTPATIENT DRUG.—Subject to the exceptions in subparagraph (D), the term 'covered outpatient drug' means—

"(A) of those drugs which are treated as prescribed drugs for purposes of section 2171(a)(1)(H), a drug which may be dispensed only upon prescription (except as provided in paragraph (7)), and—

"(i) which is approved as a prescription drug under section 505 or 507 of the Federal Food, Drug, and Cosmetic Act;

"(ii)(I) which was commercially used or sold in the United States before the date of the enactment of the Drug Amendments of 1962 or which is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) which has not been the subject of a final determination by the Secretary that it is a 'new drug' (within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act) or an action brought by the Secretary under section 301, 302(a), or 304(a) of such Act to enforce section 502(f) or 505(a) of such Act; or

"(iii)(I) which is described in section 107(c)(3) of the Drug Amendments of 1962 and for which the Secretary has determined there is a compelling justification for its medical need, or is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) for which the Secretary has not issued a notice of an opportunity for a hearing under section 505(e) of the Federal Food, Drug, and Cosmetic Act on a proposed order of the Secretary to withdraw approval of an application for such drug under such section because the Secretary has determined that the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling;

"(B) a biological product, other than a vaccine which—

"(i) may only be dispensed upon prescription,

"(ii) is licensed under section 351 of the Public Health Service Act, and

"(iii) is produced at an establishment licensed under such section to produce such product;

"(C) insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act; and

"(D) a drug which may be sold without a prescription (commonly referred to as an 'over-the-counter drug'), if the drug is prescribed by a physician (or other person authorized to prescribe under State law).

"(3) LIMITING DEFINITION.—The term 'covered outpatient drug' does not include any drug, biological product, or insulin provided as part of, or as incident to and in the same setting as, any of the following (and for which payment may be made under a MediGrant plan as part of payment for the following and not as direct reimbursement for the drug):

"(A) Inpatient hospital services.

"(B) Hospice services.

"(C) Dental services, except that drugs for which the MediGrant plan authorizes direct reimbursement to the dispensing dentist are covered outpatient drugs.

"(D) Physicians' services.

"(E) Outpatient hospital services.

"(F) Nursing facility services and services provided by an intermediate care facility for the mentally retarded.

"(G) Other laboratory and x-ray services.

"(H) Renal dialysis services.

Such term also does not include any such drug or product for which a National Drug Code number is not required by the Food and Drug Administration or a drug or biological used for a medical indication which is not a medically accepted indication. Any drug, biological product, or insulin excluded from the definition of such term as a result of this paragraph shall be treated as a covered outpatient drug for purposes of determining the best price (as defined in subsection (c)(1)(C)) for such drug, biological product, or insulin.

"(4) MANUFACTURER.—The term 'manufacturer' means, with respect to a covered outpatient drug, the entity holding legal title to or possession of the National Drug Code number for such drug.

"(5) MEDICALLY ACCEPTED INDICATION.—The term 'medically accepted indication' means any use for a covered outpatient drug which is approved under the Federal Food, Drug, and Cosmetic Act, or the use of which is supported by one or more citations included or approved for inclusion in any of the following compendia:

"(A) American Hospital Formulary Service Drug Information.

"(B) United States Pharmacopeia-Drug Information.

"(C) American Medical Association Drug Evaluations.

"(D) The peer-reviewed medical literature.

"(6) MULTIPLE SOURCE DRUG; INNOVATOR MULTIPLE SOURCE DRUG; NONINNOVATOR MULTIPLE SOURCE DRUG; SINGLE SOURCE DRUG.—

"(A) DEFINED.—

"(i) MULTIPLE SOURCE DRUG.—The term 'multiple source drug' means, with respect to a rebate period, a covered outpatient drug (not including any drug described in paragraph (2)(D)) for which there are 2 or more drug products which—

"(I) are rated as therapeutically equivalent (under the Food and Drug Administration's most recent publication of 'Approved Drug Products with Therapeutic Equivalence Evaluations'),

"(II) except as provided in subparagraph (B), are pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C) and as determined by the Food and Drug Administration, and

"(III) are sold or marketed in the State during the period.

"(ii) INNOVATOR MULTIPLE SOURCE DRUG.—The term 'innovator multiple source drug' means a multiple source drug that was originally marketed under an original new drug application or product licensing application approved by the Food and Drug Administration.

"(iii) NONINNOVATOR MULTIPLE SOURCE DRUG.—The term 'noninnovator multiple source drug' means a multiple source drug that is not an innovator multiple source drug.

"(iv) SINGLE SOURCE DRUG.—The term 'single source drug' means a covered outpatient drug which is produced or distributed under an original new drug application approved by the Food and Drug Administration, including a drug product marketed by any cross-licensed producers or distributors operating under the new drug application or product licensing application.

"(B) EXCEPTION.—Subparagraph (A)(i)(II) shall not apply if the Food and Drug Administration changes by regulation the requirement that, for purposes of the publication described in subparagraph (A)(i)(I), in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C).

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) drug products are pharmaceutically equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity;

"(ii) drugs are bioequivalent if they do not present a known or potential bioequivalence problem, or, if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence; and "(iii) a drug product is considered to be sold or marketed in a State if it appears in a published national listing of average wholesale prices selected by the Secretary, if the listed product is generally available to the public through retail pharmacies in that State.

"(7) NONPRESCRIPTION DRUGS.—If the MediGrant plan of a State participating in the MediGrant master rebate agreement under this section includes coverage of prescribed drugs as described in section 2171(a)(1)(H) and permits coverage of drugs which may be sold without a prescription (commonly referred to as 'over-the-counter' drugs), if they are prescribed by a physician (or other person authorized to prescribe under State law), such a drug shall be regarded as a covered outpatient drug for purposes of the State's participation in the agreement.

"(8) REBATE PERIOD.—The term 'rebate period' means, with respect to an agreement under subsection (a), a calendar quarter or other period specified by the Secretary with respect to the payment of rebates under such agreement.".

SEC. 16002. TERMINATION OF CURRENT PROGRAM AND TRANSITION.

(a) TERMINATION OF CURRENT PROGRAM; LIMITATION ON MEDICAID PAYMENTS IN FISCAL YEAR 1996.—Title XIX of the Social Security Act is amended—

(1) by redesignating section 1931 as section 1932; and

(2) by inserting after section 1930 the following new section:

"TERMINATION OF MEDICAID PROGRAM; LIMITATION ON NEW OBLIGATION AUTHORITY

"SEC. 1931. (a) ELIMINATION OF INDIVIDUAL ENTITLEMENT.—Effective on the date of the enactment of this section—

"(1) except as provided in subsection (b), the Federal Government has no obligation to provide payment with respect to items and services provided under this title, and

"(2) this title shall not be construed as providing for an entitlement, under Federal law in relation to the Federal Government, in an individual or person (including any provider) at the time of provision or receipt of services.

"(b) LIMITATION ON OBLIGATION AUTHORITY.—Notwithstanding any other provision of this title—

"(1) POST-ENACTMENT, PRE-MEDIGRANT.—Subject to paragraph (2), the Secretary is authorized to enter into obligations with any State under this title for expenses incurred after the date of the enactment of this Act and during fiscal year 1996, but not in excess of the obligation allotment for that State for fiscal year 1996 under section 2121(b)(4).

"(2) NONE AFTER MEDIGRANT.—The Secretary is not authorized to enter into any obligation with any State under this title for expenses incurred on or after the earlier of—

"(A) October 1, 1996; or

"(B) the first day of the first quarter on which the State plan under title XXI is first effective.

"(3) AGREEMENT.—A State's submission of claims for payment under section 1903 after the date of the enactment of this title with respect to which the limitation described in paragraph (1) applies is deemed to constitute the State's acceptance of the obligation limitation under such paragraph (including the formula for computing the amount of such obligation limitation).

"(c) REQUIREMENT FOR TIMELY SUBMITTAL OF CLAIMS.—No payment shall be made to a State under this title with respect to an obligation incurred before the date of the enactment of this section, unless the State has submitted to the Secretary, by not later than June 30, 1996, a claim for Federal financial participation for expenses paid by the State with respect to such obligations. Nothing in subsection (a) or (b) shall be construed as affecting the obligation of the Federal Government to pay claims described in the previous sentence.".

(b) MEDICAID TRANSITION.—

(1) TREATMENT OF CERTAIN CAUSES OF ACTION.—No cause of action under title XIX of the Social Security Act which seeks to require a State to establish or maintain minimum payment rates under such title and which has not become final as of the date of the enactment of this Act shall be brought or continued.

(2) TREATMENT OF CERTAIN DISALLOWANCES.—Notwithstanding any provision of law, in the case where payment has been made under section 1903(a) of the Social Security Act to a State before October 1, 1995, and for which a disallowance has not been taken as of such date (or, if so taken, has not been completed by such date), the Secretary of Health and Human Services shall discontinue the disallowance proceeding and, if such disallowance has been taken

as of the date of the enactment of this Act, any payment reductions effected shall be rescinded and the payments returned to the State.

(3) EXTENSION OF MORATORIUM.—Section 6408(a)(3) of the Omnibus Budget Reconciliation Act of 1989, as amended by section 13642 of the Omnibus Budget Reconciliation Act of 1993, is amended by striking "December 31, 1995" and inserting "the first day of the first quarter on which the MediGrant plan for the State of Michigan is first effective under title XXI of such Act".

(c) NO APPLICATION OF PRIOR MEDICAID JUDGMENTS TO MEDIGRANT PROGRAM.—No judicial or administrative decision rendered regarding requirements imposed under title XIX of the Social Security Act with respect to a State shall have any application to the MediGrant plan of the State title XXI of such Act. A State may, pursuant to the previous sentence, seek the abrogation or modification of any such decision after the date of termination of the State plan under title XIX of such Act.

(d) TERMINATION OF PROGRAM FOR DISTRIBUTION OF PEDIATRIC VACCINES

(1) IN GENERAL.—Subject to paragraph (2), section 1928 of the Social Security Act (42 U.S.C. 1396s) is repealed, effective on the date of the enactment of this Act.

(2) TRANSITION.—(A) Such repeal shall not affect the distribution of vaccines purchased and delivered to the States before the date of the enactment of this Act.

(B) No vaccine may be purchased after such date by the Federal Government or any State under any contract under section 1928(d) of the Social Security Act.

(e) ANTI-FRAUD PROVISIONS.—

(1) IN GENERAL.—Section 1128(h)(1) of the Social Security Act (42 U.S.C. 1320a–7(h)(1)) is amended by inserting "or a MediGrant plan under title XXI" after "title XIX".

(2) CONTINUED ROLE OF INSPECTOR GENERAL.—The Inspector General in the Department of Health and Human Services shall have the same responsibilities and duties in relation to fraud and abuse and related matters under the MediGrant program under title XXI of the Social Security Act as such Inspector General has had in relation to the medicaid program under title XIX of such Act before the date of the enactment of this Act.

TITLE XVII—DEPARTMENT OF COMMERCE ABOLITION

SEC. 17001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Department of Commerce Dismantling Act".

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

CHAPTER 1—ESTABLISHMENT OF FEDERAL STATISTICS AGENCY

CHAPTER 2—ADMINISTRATIVE PROVISIONS

CHAPTER 3—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

Subtitle D—United States Trade Administration

CHAPTER 1—GENERAL PROVISIONS

CHAPTER 2—UNITED STATES TRADE ADMINISTRATION

CHAPTER 3—TRANSFERS TO THE ADMINISTRATION

CHAPTER 4—ADMINISTRATIVE PROVISIONS

CHAPTER 5—RELATED AGENCIES

CHAPTER 6—CONFORMING AMENDMENTS

CHAPTER 7—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

CHAPTER 8—MISCELLANEOUS

Subtitle A—Abolishment of Department of Commerce

SEC. 17101. REESTABLISHMENT OF DEPARTMENT AS COMMERCE PROGRAMS RESOLUTION AGENCY.

(a) REESTABLISHMENT.—The Department of Commerce is hereby redesignated as the Commerce Programs Resolution Agency, which shall be a free-standing agency in the executive branch of the Government.

(b) ADMINISTRATOR.—

(1) IN GENERAL.—There shall be at the head of the Agency an Administrator of the Agency, who shall be appointed by the President, by and with the advice and consent of the Senate. The Agency shall be administered under the supervision and direction of the Administrator. The Administrator shall receive compensation at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code.

(2) INITIAL APPOINTMENT OF ADMINISTRATOR.—Notwithstanding any other provision of this title or any other law, the President may, at any time after the date of the enactment of this title, appoint an individual to serve as Administrator of the Commerce Programs Resolution Agency (who may be the Secretary of Commerce), as such position is established under paragraph (1). An appointment under this paragraph may not be construed to affect the position of Secretary of Commerce or the authority of the Secretary before the effective date specified in section 17109(a).

(c) DUTIES.—The Administrator shall be responsible for—

(1) the administration and wind-up, during the wind-up period, of all functions of the Administrator pursuant to section 17102 and the other provisions of this title;

(2) the administration and wind-up, during the wind-up period, of any outstanding obligations of the Federal Government under any programs terminated or repealed by this title; and

(3) taking such other actions as may be necessary, before the termination date specified in section 17106(d), to wind up any outstanding affairs of the Department of Commerce.

SEC. 17102. FUNCTIONS.

Except to the extent a function is abolished or vested in another official or agency by this title, the Administrator shall perform all functions that, immediately before the effective date specified in section 17109(a), were functions of the Department of Commerce (or any office of the Department) or were authorized to be performed by the Secretary of Commerce or any other officer or employee of the Department in the capacity as such officer or employee.

SEC. 17103. DEPUTY ADMINISTRATOR.

The Agency shall have a Deputy Administrator, who shall—

(1) be appointed by and report to the Administrator; and

(2) shall perform such functions as may be delegated by the Administrator.

SEC. 17104. CONTINUATION OF SERVICE OF DEPARTMENT OFFICERS.

(a) CONTINUATION OF SERVICE OF SECRETARY.—The individual serving on the effective date specified in section 17109(a) as the Secretary of Commerce may serve and act as Administrator until the date an individual is appointed under this title to the position of Administrator, or until the end of the 120-day period provided for in section 3348 of title 5, United States Code (relating to limitations on the period of time a vacancy may be filled temporarily), whichever is earlier.

(b) CONTINUATION OF SERVICE OF OTHER OFFICERS.—An individual serving on the effective date specified in section 17109(a) as an officer of the Department of Commerce other than the Secretary of Commerce may continue to serve and act in an equivalent capacity in the Agency until the date an individual is appointed under this title to the position of Administrator, or until the end of the 120-day period provided for in section 3348 of title 5, United States Code (relating to limitations on the period of time a vacancy may be filled temporarily) with respect to that appointment, whichever is earlier.

(c) COMPENSATION FOR CONTINUED SERVICE.—Any person—

(1) who serves as the Administrator under subsection (a), or

(2) who serves under subsection (b),

after the effective date specified in section 17109(a) and before the first appointment of a person as Administrator shall continue to be compensated for so serving at the rate at which such person was compensated before such effective date.

SEC. 17105. REORGANIZATION.

The Administrator may allocate or reallocate any function of the Agency pursuant to this title among the officers of the Agency, and may establish, consolidate, alter, or discontinue in the Commerce Programs Resolution Agency any organizational entities that were entities of the Department of Commerce, as the Administrator considers necessary or appropriate.

SEC. 17106. ABOLISHMENT OF COMMERCE PROGRAMS RESOLUTION AGENCY.

(a) IN GENERAL.—Effective on the termination date specified in subsection (d), the Commerce Programs Resolution Agency is abolished.

(b) ABOLITION OF FUNCTIONS.—Except for functions transferred or otherwise continued by this title, all functions that, immediately before the termination date specified in subsection (d), were functions of the Commerce Programs Resolution Agency are abolished effective on that termination date.

(c) PLAN FOR WINDING UP AFFAIRS.—Not later than the effective date specified in section 17109(a), the President shall submit to the Congress a plan for winding up the affairs of the Agency in accordance with this title and by not later than the termination date specified in subsection (d).

(d) TERMINATION DATE.—The termination date under this subsection is the date that is 3 years after the date of the enactment of this title.

SEC. 17107. GAO REPORT.

Not later than 180 days after the date of enactment of this title, the Comptroller General of the United States shall submit to the Congress a report which shall include recommendations for the most efficient means of achieving, in accordance with this title—

(1) the complete abolishment of the Department of Commerce; and

(2) the termination or transfer or other continuation of the functions of the Department of Commerce.

SEC. 17108. CONFORMING AMENDMENTS.

(a) PRESIDENTIAL SUCCESSION.—Section 19(d)(1) of title 3, United States Code, is amended by striking "Secretary of Commerce,".

(b) EXECUTIVE DEPARTMENTS.—Section 101 of title 5, United States Code, is amended by striking the following item:

"The Department of Commerce.".

(c) SECRETARY'S COMPENSATION.—Section 5312 of title 5, United States Code, is amended by striking the following item:

"Secretary of Commerce.".

(d) COMPENSATION FOR POSITIONS AT LEVEL III.—Section 5314 of title 5, United States Code, is amended—

(1) by striking the following item:

"Under Secretary of Commerce, Under Secretary of Commerce for Economic Affairs, Under Secretary of Commerce for Export Administration and Under Secretary of Commerce for Travel and Tourism.";

(2) by striking the following item:

"Under Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Administrator of the National Oceanic and Atmospheric Administration."; and

(3) by striking the following item:

"Under Secretary of Commerce for Technology.".

(e) COMPENSATION FOR POSITIONS AT LEVEL IV.—Section 5315 of title 5, United States Code, is amended—

(1) by striking the following item:

"Assistant Secretaries of Commerce (11).";

(2) by striking the following item:

"General Counsel of the Department of Commerce.";

(3) by striking the following item:

"Assistant Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Deputy Administrator of the National Oceanic and Atmospheric Administration.";

(4) by striking the following item:

"Director, National Institute of Standards and Technology, Department of Commerce.";

(5) by striking the following item:

"Inspector General, Department of Commerce.";

(6) by striking the following item:

"Chief Financial Officer, Department of Commerce."; and

(7) by striking the following item:

"Director, Bureau of the Census, Department of Commerce.".

(f) COMPENSATION FOR POSITIONS AT LEVEL V.—Section 5316 of title 5, United States Code, is amended—

(1) by striking the following item:

"Director, United States Travel Service, Department of Commerce."; and

(2) by striking the following item:

"National Export Expansion Coordinator, Department of Commerce.".

(g) INSPECTOR GENERAL ACT OF 1978.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 9(a)(1), by striking subparagraph (B);

(2) in section 11(1), by striking "Commerce,"; and

(3) in section 11(2), by striking "Commerce,";

SEC. 17109. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this subtitle shall take effect on the date that is 6 months after the date of the enactment of this subtitle.

(b) PROVISIONS EFFECTIVE ON DATE OF ENACTMENT.—The following provisions of this subtitle shall take effect on the date of the enactment of this subtitle:

(1) Section 17101(b).

(2) Section 17106(c).

(3) Section 17107.

Subtitle B—Disposition of Particular Programs, Functions, and Agencies of Department of Commerce

SEC. 17201. ECONOMIC DEVELOPMENT.

(a) TERMINATED FUNCTIONS.—The Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 et seq.) is repealed.

(b) TRANSFER OF FINANCIAL OBLIGATIONS OWED TO THE DEPARTMENT.—There are transferred to the Secretary of the Treasury the loans, notes, bonds, debentures, securities, and other financial obligations owned by the Department of Commerce under the Public Works and Economic Development Act of 1965, together with all assets or other rights (including security interests) incident thereto, and all liabilities related thereto. There are assigned to the Secretary of the Treasury the functions, powers, and abilities vested in or delegated to the Secretary of Commerce or the Department of Commerce to manage, service, collect, sell, dispose of, or otherwise realize proceeds on obligations owed to the Department of Commerce under authority of such Act with respect to any loans, obligations, or guarantees made or issued by the Department of Commerce pursuant to such Act.

(c) SALE OF LOANS.—The Secretary of the Treasury shall take such actions as may be necessary to ensure that to the maximum extent practicable loans transferred to the Secretary under subsection (b) are sold to the public. The Secretary shall prescribe terms for the sale of such loans to ensure that such sale will bring the highest possible rate of return to the Federal Government.

(d) AUDIT.—Not later than 18 months after the date of the enactment of this title, the Comptroller General shall conduct an audit of all grants made or issued by the Department of Commerce under the Public Works and Economic Development Act of 1965 in fiscal year 1995 and all loans, obligations, and guarantees and shall transmit to Congress a report on the results of such audit.

SEC. 17202. TECHNOLOGY ADMINISTRATION.

(a) TECHNOLOGY ADMINISTRATION.—

(1) GENERAL RULE.—Except as otherwise provided in this section, the Technology Administration shall be terminated on the effective date specified in section 17208(a).

(2) OFFICE OF TECHNOLOGY POLICY.—The Office of Technology Policy is hereby terminated.

(b) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—

(1) GENERAL RULE.—Except as otherwise provided in this subsection, the National Institute of Standards and Technology (in this subsection referred to as the "Institute") shall be transferred to the United States Trade Administration.

(2) FUNCTIONS OF DIRECTOR.—Except as otherwise provided in this subsection, upon the transfer under paragraph (1), the Director of the Institute shall perform all functions relating to the Institute that, immediately before the effective date specified in section 17208(a), were functions of the Secretary of Commerce or the Under Secretary of Commerce for Technology, including the administration of section 17 of the Stevenson-Wydler Technology Innovation Act of 1980.

(3) LABORATORIES.—(A) The laboratories of the Institute shall be transferred to the United States Trade Administration.

(B) The United States Trade Administration shall attempt to sell the property of the laboratories of the Institute, within 18 months after the effective date specified in section 17208(a), to a private sector entity intending to perform substantially the same functions as were performed by the laboratories of the Institute immediately before such effective date.

(C) If no offer to purchase property under subparagraph (B) is received within the 18-month period described in such subparagraph, the United States Trade Administration shall submit a report to the Congress containing recommendations on the appropriate disposition of the property and functions of the laboratories of the Institute.

(4) PROVISION OF SERVICES BY PRIVATE SECTOR.—The Director of the Institute shall consider proposals from experienced and qualified private-sector entities to provide services that, immediately before the effective date specified in section 17208(a), were performed by the Technology Administration, particularly foreign competitive technology assessments. The Director shall require that proposals to provide a service that are accepted under this paragraph satisfy user needs better than, and provide such service at a lower cost than, the service could be provided by the Federal Government.

(c) NATIONAL TECHNICAL INFORMATION SERVICE.—

(1) SALE OF PROPERTY.—The Commerce Programs Resolution Agency shall attempt to sell the property of the National Technical Information Service, within 18 months after the effective date specified in section 17208(a), to a private sector entity intending to perform substantially the same functions as were performed by the National Technical Information Service immediately before such effective date.

(2) RECOMMENDATIONS.—If no offer to purchase property under paragraph (1) is received within the 18-month period described in such paragraph, the Commerce Programs Resolution Agency shall submit a report to the Congress containing recommendations on the appropriate disposition of the property and functions of the National Technical Information Service.

(3) FUNDING.—No Federal funds may be appropriated for the National Technical Information Service for any fiscal year after fiscal year 1995.

(4) ELECTRONIC REPORTING.—Each Federal research report that is required to be submitted to the National Technical Information Service after the date of the enactment of this Act shall be submitted in an electronic, standardized format in order to facilitate the availability of Federal research reports on the Internet and the World Wide Web.

(d) AMENDMENTS.—

(1) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY ACT.—The National Institute of Standards and Technology Act (15 U.S.C. 271 et seq.) is amended—

(A) in section 2(b), by striking paragraph (1) and redesignating paragraphs (2) through (11) as paragraphs (1) through (10), respectively;

(B) in section 2(d), by striking ", including the programs established under sections 25, 26, and 28 of this Act";

(C) in section 10, by striking "Advanced" in both the section heading and subsection (a), and inserting in lieu thereof "Standards and"; and

(D) by striking sections 24, 25, 26, and 28.

(2) STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980.—(A) The Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.) is amended—

(i) in section 3, by striking paragraph (2) and redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively;

(ii) in section 4, by striking paragraphs (1), (4), and (13) and redesignating paragraphs (2), (3), (5), (6), (7), (8), (9), (10), (11), and (12) as paragraphs (1) through (10), respectively;

(iii) by striking sections 5, 6, 7, 8, 9, and 10; and

(iv) in section 11—

(I) by striking ", the Federal Laboratory Consortium for Technology Transfer," in subsection (c)(3);

(II) by striking "and the Federal Laboratory Consortium for Technology Transfer" in subsection (d)(2);

(III) by striking ", and refer such requests" and all that follows through "available to the Service" in subsection (d)(3); and

(IV) by striking subsection (e).

(B) Section 17 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3711a, relating to the Malcolm Baldrige National Quality Award) is repealed. It is the sense of the Congress that a private-sector entity should continue the national quality award program established by such section.

SEC. 17203. TERMINATED FUNCTIONS OF NTIA.

(a) REPEALS.—The following provisions of law are repealed:

(1) Subpart A of part IV of title III of the Communications Act of 1934 (47 U.S.C. 390 et seq.), relating to assistance for public telecommunications facilities.

(2) Subpart B of part IV of title III of the Communications Act of 1934 (47 U.S.C. 394 et seq.), relating to the Endowment for Children's Educational Television.

(3) Subpart C of part IV of title III of the Communications Act of 1934 (47 U.S.C. 395 et seq.), relating to Telecommunications Demonstration grants.

(b) DISPOSAL OF NTIA LABORATORIES.—

(1) TRANSFER TO RESOLUTION AGENCY.—The laboratories of the National Telecommunications and Information Administration shall be transferred to the Commerce Programs Resolution Agency.

(2) SALE OF LABORATORIES.—The Commerce Programs Resolution Agency shall attempt to sell the property of such laboratories, within 18 months after the effective date specified in section 17208(a), to a private sector entity intending to perform substantially the same functions as were performed by such laboratories immediately before such effective date.

(3) REPORT ON DISPOSITION.—If no offer to purchase property under subparagraph (B) is received within the 18-month period described in such subparagraph, the Commerce Programs Resolution Agency shall submit a report to the Congress containing recommendations on the appropriate disposition of the property and functions of such laboratories.

SEC. 17204. TRANSFER OF NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION.

(a) TRANSFER TO USTA.—The National Telecommunications and Information Administration shall be transferred to the United States Trade Administration.

(b) ADMINISTRATOR.—The head of the National Telecommunications and Information Administration shall be an Administrator who shall be appointed by the

President, by and with the advice and consent of the Senate. The functions of the National Telecommunications and Information Administration, and of the Secretary of Commerce and the Assistant Secretary for Communications and Information of the Department of Commerce with respect to the National Telecommunications and Information Administration, are transferred to the Administrator.

(c) REFERENCES.—References in any provision of law (including to the National Telecommunications and Information Administration Organization Act) to the Secretary of Commerce or the Assistant Secretary for Communications and Information of the Department of Commerce with respect to a function vested pursuant to this section in the Administrator of the National Telecommunications and Information Administration shall be deemed to refer to the Administrator of the National Telecommunications and Information Administration.

SEC. 17205. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

(a) TRANSFER TO DEPARTMENT OF AGRICULTURE.—The National Oceanic and Atmospheric Administration shall be transferred to the Department of Agriculture.

(b) DEFINITIONS.—For the purposes of this section, the term—

(1) "Act of 1890" means the Act entitled "An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Bureau to the Department of Agriculture", approved October 1, 1890 (26 Stat. 653);

(2) "Act of 1947" means the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.);

(3) "Act of 1970" means the Act entitled "An Act to clarify the status and benefits of commissioned officers of the National Oceanic and Atmospheric Administration, and for other purposes", approved December 31, 1970 (33 U.S.C. 857–1 et seq.);

(4) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration; and

(5) "Secretary" means the Secretary of Agriculture.

(c) LEASING AND CONTRACTING.—

(1) CONTRACTING AUTHORITY.—Notwithstanding any other provision of law, the Secretary of Agriculture is authorized to enter into contracts for data or days-at-sea to fulfill the National Oceanic and Atmospheric Administration missions of marine research, climate research, fisheries research, hurricane tracking, and mapping and charting services.

(2) UNOLS VESSEL AGREEMENTS.—In fulfilling the National Oceanic and Atmospheric Administration mission requirements described in paragraph (1), the Secretary of Agriculture shall use excess capacity of University National Oceanographic Laboratory System vessels where appropriate, and may enter into memoranda of agreement with operators of those vessels to carry out those mission requirements.

(d) ABOLITIONS.—The National Ocean Service and the Office of Oceanic and Atmospheric Research are abolished.

(e) TERMINATION OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION CORPS OF COMMISSIONED OFFICERS.—

(1) NUMBER OF OFFICERS.—Notwithstanding section 8 of the Act of June 3, 1948 (33 U.S.C. 853g), no commissioned officers are authorized for the National Oceanic and Atmospheric Administration for any fiscal year after fiscal year 1996.

(2) SEPARATION PAY.—The Secretary of Agriculture may separate commissioned officers from the active list of the National Oceanic and Atmospheric Administration, and may do so without providing separation pay.

(3) TRANSFER.—(A) Subject to the approval of the Secretary of Defense and under terms and conditions specified by the Secretary, commissioned officers subject to paragraph (1) may transfer to the armed services under section 716 of title 10, United States Code.

(B) Subject to the approval of the Secretary of Transportation and under terms and conditions specified by the Secretary, commissioned officers subject to paragraph (1) may transfer to the United States Coast Guard under section 716 of title 10, United States Code.

(C) Subject to the approval of the Administrator and under terms and conditions specified by the Administrator, commissioned officers subject to paragraph (1) who on the date of enactment of this section have been assigned for a period of one year or more to the programs transferred to the Administration by this Act (other than those associated with the modernization of the National Oceanic and Atmospheric Administration fleet or the operations of the National

Oceanic and Atmospheric Administration Corps of Commissioned Officers) may transfer to the Administration as members of the civil service.

(4) REPEALS.—(A) The following provisions of law are repealed:

(i) The Coast and Geodetic Survey Commissioned Officers' Act of 1948 (33 U.S.C. 853a–853o, 853p–853u).

(ii) The Act of February 16, 1929 (Chapter 221, section 5; 45 Stat. 1187; 33 U.S.C. 852a).

(iii) The Act of January 19, 1942 (Chapter 6; 56 Stat. 6).

(iv) Section 9 of Public Law 87–649 (76 Stat. 495).

(v) The Act of May 22, 1917 (Chapter 20, section 16; 40 Stat. 87; 33 U.S.C. 854 et seq.).

(vi) The Act of December 3, 1942 (Chapter 670; 56 Stat. 1038.

(vii) Sections 1 through 5 of Public Law 91–621 (84 Stat. 1863; 33 U.S.C. 857–1 et seq.).

(viii) The Act of August 10, 1956 (Chapter 1041, section 3; 70A Stat. 619; 33 U.S.C. 857a).

(ix) The Act of May 18, 1920 (Chapter 190, section 11; 41 Stat. 603; 33 U.S.C. 864).

(x) The Act of July 22, 1947 (Chapter 286; 61 Stat. 400; 33 U.S.C. 873, 874).

(xi) The Act of August 3, 1956 (Chapter 932; 70 Stat. 988; 33 U.S.C. 875, 876).

(xii) All other Acts inconsistent with this subsection.

(B) The effective date of the repeals under subparagraph (A) shall be September 30, 1997.

(5) UNEXPENDED BALANCES.—Unexpended balances of appropriations, allocations, and other funds available or made available in connection with the National Oceanic and Atmospheric Administration Corps of Commissioned officers may be used by the Secretary for payments under section 8 of the Act of June 3, 1948 (33 U.S.C. 853g).

(6) ABOLITION.—The Office of the National Oceanic and Atmospheric Administration Corps of Operations and the Commissioned Personnel Center are abolished effective September 30, 1997.

(f) OTHER TERMINATIONS.—The following programs of the National Oceanic and Atmospheric Administration are terminated:

(1) The National Undersea Research Program.

(2) The Fleet Modernization, Shipbuilding, and Construction Account.

(3) The Charleston, South Carolina, Special Management Plan.

(4) Chesapeake Bay Observation Buoys.

(5) Federal/State Weather Modification Grants.

(6) The Southeast Storm Research Account.

(7) The Southeast United States Caribbean Fisheries Oceanographic Coordinated Investigations Program.

(8) National Institute for Environmental Renewal.

(9) The Lake Champlain Study.

(10) The Maine Marine Research Center.

(11) The South Carolina Cooperative Geodetic Survey Account.

(12) Pacific Island Technical Assistance.

(13) Sea Grant/Oyster Disease Account.

(14) National Coastal Research and Development Institute Account.

(15) VENTS program.

(16) National Weather Service non-Federal, non-wildfire Fire Weather Service.

(17) National Weather Service Regional Climate Centers.

(18) National Weather Service Samoa Weather Forecast Office Repair and Upgrade Account.

(19) Dissemination of Weather Charts (Marine Facsimile Service).

(20) The global climate change program.

(21) The Global Learning and Observations to Benefit the Environment Program.

Any unobligated balances appropriated to carry out any program referred to in this subsection shall be transferred to the general fund of the Treasury.

(g) REPEALS.—The following provisions of law are repealed effective on the date of enactment of this Act:

(1) The Ocean Thermal Conversion Act of 1980 (42 U.S.C. 9101 et seq.).

(2) Title IV of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1447 et seq.).

(3) Title V of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 2801 et seq.).

(4) Public Law 85–342 (72 Stat. 35; 16 U.S.C. 778 et seq.), relating to fish research and experimentation.

(5) The first section of the Act of August 8, 1956 (70 Stat. 1126; 16 U.S.C. 760d), relating to grants for commercial fishing education.

(6) Public Law 86–359 (16 U.S.C. 760e et seq.), relating to the study of migratory marine gamefish.

(7) The Act of August 15, 1914 (Chapter 253; 38 Stat. 692; 16 U.S.C. 781 et seq.), prohibiting the taking of sponges in the Gulf of Mexico and the Straits of Florida.

(h) TRANSFER OF FISHERIES PROGRAMS TO MARAD.—

(1) OPERATING DIFFERENTIAL SUBSIDY PROGRAM.—Section 607(k)(9) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1177(k)(9)) is amended to read as follows:

"(9) The term 'Secretary' means the Secretary of Transportation.".

(2) SHIP MORTGAGE INSURANCE.—Section 1101(n) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1177(k)(9)) is amended to read as follows:

"(n) The term 'Secretary' means the Secretary of Transportation.".

(3) OUTER CONTINENTAL SHELF.—Section 401(8) of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1841 et seq.) is amended to read as follows:

"(8) 'Secretary' means the Secretary of Transportation.".

(4) FISHERMEN'S PROTECTIVE ACT OF 1967.—Section 10(a) of the Fishermen's Protective Act of 1967 (22 U.S.C 1980(a)) is amended—

(A) by amending paragraph (1) to read as follows:

"(1) The terms 'fishery', 'fishery conservation zone', 'fishing', 'fishing vessel', and 'vessel of the United States' have the same meaning given to each of such terms in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802)."; and

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

"(5) The term 'Secretary' means the Secretary of Transportation.".

(i) TRANSFER OF MAPPING, CHARTING, AND GEODESY FUNCTIONS TO THE UNITED STATES GEOLOGICAL SURVEY.—There are hereby transferred to the Director of the United States Geological Survey the functions relating to mapping, charting, geodesy, observation, and prediction of tides and sea level authorized under the Act of August 7, 1947 (61 Stat. 787; 33 U.S.C. 883a).

(j) REPORT ON TERMINATION OF PROGRAMS.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall submit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report certifying that all the programs listed in subsection (f) will be terminated no later than September 30, 1995.

(k) COMPETITION WITH PRIVATE SECTOR.—The National Weather Service shall not compete, or assist other entities to compete, with the private sector when a service is currently provided or can be provided by commercial enterprise, unless—

(1) the Secretary of Agriculture finds that the private sector is unwilling or unable to provide the services; and

(2) the service provides vital weather warnings and forecasts for the protection of lives and property of the general public.

(l) AMENDMENTS.—The Act of 1890 is amended—

(1) by striking section 3 (15 U.S.C. 313); and

(2) in section 9 (15 U.S.C. 317), by striking all after "Department of Agriculture" and inserting in lieu thereof a period.

(m) NWS REPORT.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Agriculture shall submit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report detailing all National Weather Service activities which do not conform to the requirements of this section and outlining a timetable for their termination.

(n) PROHIBITION OF LOBBYING ACTIVITIES.—None of the funds authorized by this section shall be available for any activity whose purpose is to influence legislation pending before the Congress, provided that this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

(o) REPORT ON LABORATORIES.—

(1) IN GENERAL.—No later than 120 days after the date of the enactment of this Act, the Secretary of Agriculture shall conduct a review of the laboratories operated by the National Oceanic and Atmospheric Administration and submit a report to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(2) REQUIREMENTS.—The report required by paragraph (1) shall—

(A) address potential efficiencies and savings which could be achieved through closing or consolidating laboratory facilities; and

(B) review each laboratory's—

(i) mission and activities and their correlation to the mission priorities of the National Oceanic and Atmospheric Administration;

(ii) physical assets, equipment, condition, and personnel resources;

(iii) organization and program management; and

(iv) address other issues the Inspector General considers relevant.

(p) LIMITATION ON NOAA ANNUAL EXPENDITURES.—Notwithstanding section 17610, the amount expended by the United States each fiscal year for the National Oceanic and Atmospheric Administration may not exceed 75 percent of the total amount expended by the United States for the National Oceanic and Atmospheric Administration during fiscal year 1994.

SEC. 17206. MISCELLANEOUS ABOLISHMENTS.

(a) ABOLISHMENTS.—The following agencies and programs of the Department of Commerce are abolished, and the functions of those agencies or programs are abolished except to the extent otherwise provided in this title:

(1) The Economic Development Administration.

(2) The Minority Business Development Administration.

(3) The National Telecommunications and Information Administration.

(4) The Advanced Technology Program under section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n).

(5) The Manufacturing Extension Programs under sections 25 and 26 of the National Institute of Standards and Technology Act (15 U.S.C. 278k and 278l).

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that the Congress should continue to explore the prospects for the private sector to assume responsibility for many of the functions and responsibilities of the Minority Business Development Administration.

SEC. 17207. PRIVATIZATION OF TRAVEL FUNCTIONS.

The Administrator shall abolish the United States Travel and Tourism Administration effective August 1, 1996. Prior to this date the Administrator shall submit to the Congress a recommendation for the privatization of the functions of the United States Travel and Tourism Administration. In making such a recommendation the Administrator shall consider the results of the national review conducted by the White House Conference on Travel and Tourism, including the consideration of fees to support such functions.

SEC. 17208. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this subtitle shall take effect on the effective date specified in section 17109(a).

(b) PROVISIONS EFFECTIVE ON DATE OF ENACTMENT.—The following provisions of this subtitle shall take effect on the date of the enactment of this title:

(1) section 17201.

(2) section 17206.

SEC. 17209. SENSE OF CONGRESS REGARDING USER FEES.

It is the sense of the Congress that the head of each agency that performs a function vested in the agency by this title should, wherever feasible, explore and implement user fees for the provision of services in the performance of that function, to offset operating costs.

Subtitle C—Consolidation of Statistical Functions

SEC. 17301. SHORT TITLE.

This subtitle may be cited as the "Federal Statistics Agency Establishment Act".

SEC. 17302. DEFINITIONS.

As used in this subtitle:

(1) The term "Agency" means the Federal Statistics Agency.

(2) The term "Administrator" means the Administrator of the Federal Statistics Agency.

(3) The term "Deputy Administrator" means the Deputy Administrator of the Federal Statistics Agency.

(4) The term "function" includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(5) The term "office" includes any office, bureau, institute, council, unit, or organizational entity, or any component thereof.

CHAPTER 1—Establishment of Federal Statistics Agency

SEC. 17311. ESTABLISHMENT.

The Federal Statistics Agency is hereby established as a free-standing establishment in the executive branch of the Government.

SEC. 17312. PRINCIPAL OFFICERS.

(a) ADMINISTRATOR.—(1) There shall be at the head of the Agency an Administrator of the Agency, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Agency, including all functions and offices transferred to it under this subtitle, shall be administered, in accordance with the provisions of this subtitle, under the supervision and direction of the Administrator.

(3) The Administrator shall receive basic pay at the rate payable for level II of the Executive Schedule under section 5313 of title 5, United States Code.

(b) DEPUTY ADMINISTRATOR.—(1) There shall be in the Agency a Deputy Administrator of the Agency who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) During the absence or disability of the Administrator, or in the event of a vacancy in the office of the Administrator, the Deputy Administrator shall act as Administrator. The Deputy Administrator shall perform such other duties and exercise such powers as the Administrator may from time to time prescribe.

(3) The Deputy Administrator shall receive basic pay at the rate payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(c) AGENCY DIRECTORS.—(1) There shall be in the Agency—

(A) a Director of the Census who shall, on the transfer of functions and offices under section 17313, serve as the head of the Bureau of the Census; and

(B) a Director of the Bureau of Economic Analysis who shall, on the transfer of functions and offices under section 17313, serve as the head of the Bureau of Economic Analysis.

(2) Each of the Directors shall be appointed by the President, by and with the advice and consent of the Senate. The Director of the Census shall receive basic pay at the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Director of the Bureau of Economic Analysis shall receive basic pay at the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(d) GENERAL COUNSEL.—There shall be in the Agency a General Counsel who shall administer the Office of General Counsel of the Agency. The General Counsel shall be appointed by the President, by and with the advice and consent of the Senate. The General Counsel shall receive basic pay at the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

SEC. 17313. TRANSFERS OF FUNCTIONS AND OFFICES.

(a) TRANSFER OF THE BUREAU OF THE CENSUS.—There is transferred to the Agency the Bureau of the Census of the Department of Commerce, along with all of its functions and offices.

(b) TRANSFER OF THE BUREAU OF ECONOMIC ANALYSIS.—There is transferred to the Agency the Bureau of Economic Analysis of the Department of Commerce, along with all of its functions and offices.

(c) TRANSFER OF STATISTICAL MANAGEMENT FUNCTIONS OF OMB.—There are transferred to the Administrator the functions of the Director of the Office of Management and Budget relating to statistical policy and coordination under chapter 35 of title 44, United States Code (as in effect immediately before such transfer), including such functions under sections 3504(a) and (d) and 3514(a)(10) of such chapter.

(d) TRANSFER DATE.—The transfers of functions and offices under this section shall be effective 90 days after the date of the enactment of this Act.

CHAPTER 2—ADMINISTRATIVE PROVISIONS

SEC. 17321. PERSONNEL PROVISIONS.

(a) OFFICERS AND EMPLOYEES.—The Administrator may appoint and fix the compensation of such officers and employees as may be necessary to carry out the functions of the Administrator and the Agency. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and their compensation shall be fixed in accordance with title 5, United States Code.

(b) EXPERTS AND CONSULTANTS.—The Administrator may as provided in appropriation Acts obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code, and may compensate such experts and consultants at rates not to exceed the daily rate prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(c) ACCEPTANCE OF VOLUNTARY SERVICES.—(1) Notwithstanding section 1342 of title 31, United States Code, the Administrator may accept, subject to regulations issued by the Office of Personnel Management, voluntary services if the services—

(A) are to be uncompensated; and

(B) will not be used to displace any employee.

(2) Any individual who provides voluntary services under this subsection shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, United States Code (relating to compensation for injury) and sections 2671 through 2680 of title 28, United States Code (relating to tort claims).

SEC. 17322. GENERAL ADMINISTRATIVE PROVISIONS.

(a) GENERAL AUTHORITY.—In carrying out any function transferred by this subtitle, the Administrator, or any officer or employee of the Agency, may exercise any authority available by law with respect to such function to the official or agency from which such function is transferred, and the actions of the Administrator in exercising such authority shall have the same force and effect as when exercised by such official or agency.

(b) DELEGATION.—Except as otherwise provided in this subtitle, the Administrator may delegate any function to such officers and employees of the Agency as the Administrator may designate, and may authorize such successive redelegations of such functions within the Agency as may be necessary or appropriate. No delegation of functions by the Administrator under this section or under any other provision of this Act shall relieve the Administrator of responsibility for the administration of such functions.

(c) REORGANIZATION.—(1) Except as provided in paragraph (2), the Administrator may allocate or reallocate functions among the officers of the Agency, and may establish, consolidate, alter, or abolish such offices or positions within the Agency as may be necessary or appropriate.

(2) The Administrator may not—

(A) abolish any office or position transferred to the Agency and established by statute, or any function vested by statute in such an office or an officer of such an office;

(B) abolish any office or position established by this subtitle; or

(C) alter the delegation of functions to any specific office or position required by this subtitle.

SEC. 17323. CONTRACTS.

(a) IN GENERAL.—Subject to the Federal Property and Administrative Services Act of 1949 and other applicable Federal law, the Administrator may make, enter into, and perform such contracts, grants, leases, cooperative agreements, and other similar transactions with Federal or other public agencies (including State and local governments) and private organizations and persons, and to make such payments, by way of advance or reimbursement, as the Administrator may determine necessary or appropriate to carry out functions of the Administrator or the Agency.

(b) APPROPRIATION AUTHORITY REQUIRED.—No authority to enter into contracts or to make payments under this subtitle shall be effective except to such extent or in such amounts as are provided in advance under appropriation Acts.

SEC. 17324. REGULATIONS.

The Administrator may prescribe such rules and regulations as the Administrator considers necessary or appropriate to administer and manage the functions of the Administrator or the Agency, in accordance with chapter 5 of title 5, United States Code.

SEC. 17325. SEAL.

The Administrator shall cause a seal of office to be made for the Agency of such design as the Administrator shall approve. Judicial notice shall be taken of such seal.

SEC. 17326. ANNUAL REPORT.

The Administrator shall, as soon as practicable after the close of each fiscal year, make a single, comprehensive report to the President for transmission to the Congress on the activities of the Agency during such fiscal year.

CHAPTER 3—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

SEC. 17331. TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.

Except as otherwise provided in this subtitle, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with, the functions and offices, or portions thereof, transferred by this subtitle, subject to section 1531 of title 31, United States Code, shall be transferred to the Administrator for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

SEC. 17332. EFFECT ON PERSONNEL.

(a) PRESERVATION OF GRADE AND COMPENSATION FOR 1 YEAR.—Except as otherwise provided in this subtitle, the transfer pursuant to this Act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for 1 year after the date of transfer to the Agency.

(b) PRESERVATION OF COMPENSATION FOR EXECUTIVE SCHEDULE APPOINTEES.—Any person who, on the day preceding the date of the transfer of functions and offices under section 17313, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Agency to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in the new position at not less than the rate provided for the previous position, for the duration of the service of such person in the new position.

SEC. 17333. INCIDENTAL TRANSFERS.

(a) IN GENERAL.—The Director of the Office of Management and Budget, in conjunction with the Administrator, shall make such determinations as may be necessary with regard to the functions, offices, or portions thereof transferred by this subtitle, and make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, offices, or portions thereof, as may be necessary to carry out this subtitle. The Director of the Office of Management and Budget shall provide for the termination of the affairs of all entities terminated by this subtitle and, in conjunction with the Administrator, for such further measures and dispositions as may be necessary to effectuate the purposes of this subtitle.

(b) ALLOCATION OF SES POSITIONS.—After consultation with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget may make such determinations as may be necessary with regard to the transfer of positions within the Senior Executive Service in connection with functions and offices transferred by this subtitle.

SEC. 17334. SAVINGS PROVISIONS.

(a) CONTINUITY OF LEGAL FORCE AND EFFECT.—All orders, determinations, rules, regulations, permits, grants, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, by any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this subtitle to the Administrator or the Agency; and

(2) which are in effect at the time of such transfer,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Administrator, or the authorized official, a court of competent jurisdiction, or by operation of law.

(b) PENDING PROCEEDINGS.—(1) This subtitle shall not affect any proceedings, including notices of proposed rulemaking, pending on the date of the transfer of functions and offices under section 17313 before any department, agency, commission, or component thereof, functions of which are transferred by this subtitle. Such proceedings, to the extent that they relate to functions so transferred, shall be continued, except as provided in paragraph (3).

(2) Orders may be issued in such proceedings, appeals may be taken therefrom, and payments may be made pursuant to such orders, as if this subtitle had not been enacted. Orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Secretary, by a court of competent jurisdiction, or by operation of law.

(3) Nothing in this subsection shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this subtitle had not been enacted.

(4) The Administrator may prescribe regulations providing for the orderly transfer of proceedings continued under this subsection to the Agency.

(c) NO EFFECT ON JUDICIAL PROCEEDINGS.—Except as provided in subsection (e)—

(1) the transfer of functions and offices under section 17313 shall not affect suits commenced prior to the date of such transfer; and

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this subtitle had not been enacted.

(d) NONABATEMENT OF PROCEEDINGS.—No suit, action, or other proceeding commenced by or against any officer in the official capacity of such individual as an officer of any department or agency, functions of which are transferred by this subtitle, shall abate by reason of the enactment of this subtitle. No cause of action by or against any department or agency, functions of which are transferred by this subtitle, or by or against any officer thereof in the official capacity of such officer shall abate by reason of the enactment of this subtitle.

(e) CONTINUATION OF PROCEEDING WITH SUBSTITUTION OF PARTIES.—If, before the date of the transfer of functions and offices under section 17313, any department or agency, or officer thereof in the official capacity of such officer, is a party to a suit, and under this subtitle any function of such department, agency, or officer is transferred to the Administrator or any other official of the Agency, then such suit shall be continued with the Administrator or other appropriate official of the Agency substituted or added as a party.

(f) REVIEWABILITY OF ORDERS AND ACTIONS UNDER TRANSFERRED FUNCTIONS.—Orders and actions of the Administrator in the exercise of functions transferred under this subtitle shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the agency or office, or part thereof, exercising such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this subtitle shall apply to the exercise of such function by the Administrator.

SEC. 17335. REFERENCES.

With respect to any function transferred by this subtitle and exercised on or after the date of such transfer, any reference in any other Federal law to any department, commission, or agency or to any officer or office the functions of which are so transferred is deemed to refer to the Administrator, other official, or component of the Agency to which this subtitle transfers such functions.

SEC. 17336. CONFORMING AMENDMENTS.

Chapter 35 of title 44, United States Code, is amended—

(1) in section 3504—

(A) in subsection (a) by striking "Federal statistical activities,"; and

(B) by striking subsection (d); and

(2) in section 3514(a)—

(A) by adding "and" after the semicolon at the end of paragraph (8);

(B) by striking "; and" at the end of paragraph (9)(C) and inserting a period; and

(C) by striking paragraph (10).

SEC. 17337. TRANSITION.

(a) USE OF FUNDS.—Funds available to any department or agency (or any official or component thereof), the functions or offices of which are transferred to the Administrator or the Agency by this subtitle, may, with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subtitle and other transitional and planning expenses associated with the establishment of the Agency or transfer of functions or offices thereto until such time as funds for such purposes are otherwise available.

(b) USE OF PERSONNEL.—With the consent of the appropriate department or agency head concerned, the Administrator may utilize the services of such officers, employees, and other personnel of the departments and agencies from which functions or offices have been transferred to the Administrator or the Agency, for such period of time as may reasonably be needed to facilitate the orderly implementation of this subtitle.

SEC. 17338. INTERIM APPOINTMENTS.

(a) AUTHORITY TO APPOINT.—Notwithstanding any other provision of law, in the event that one or more officers required by this subtitle to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the date of the transfer of functions and offices under section 17313, the President may designate an officer in the executive branch to act in such office for 120 days or until the office is filled as provided in this subtitle, whichever occurs first.

(b) COMPENSATION.—Any officer acting in an office pursuant to subsection (a) shall receive compensation at the rate prescribed for such office under this subtitle.

Subtitle D—United States Trade Administration

CHAPTER 1—GENERAL PROVISIONS

SEC. 17401. FINDINGS.

The Congress finds that—

(1) principal national goals of the United States are to—

(A) maintain United States leadership in international trade liberalization and expansion efforts;

(B) reinvigorate the ability of the United States economy to compete in international markets and to respond flexibly to changes in international competition; and

(C) expand United States participation in international trade through aggressive promotion and marketing of American products and services;

(2) the economy of the United States is so inextricably linked with the international economic system that all domestic economic sectors are influenced by the dynamics of global trade and investment;

(3) the expansion of United States participation in international trade will improve the general welfare of the people of the United States by increasing demand for American products and services, creating jobs, and increasing the gross national product;

(4) business, labor, and all levels of government must place the highest priority on developing methods and policies to achieve the goals described in paragraph (1), and the achievement of such goals is dependent on a marked improvement in the capability of United States businesses to compete in foreign markets;

(5) the Federal Government can enhance the capability of United States businesses to compete in foreign markets by acting to—

(A) reduce trade barriers to sales and investments by such businesses;

(B) promote American goods and services in foreign countries and encourage aggressive participation by the private sector in the international marketplace; and

(C) promote and maintain an international trade system that establishes open, transparent, and fair trade rules and leads to the expansion of United States trade;

(6) effective and efficient Government action to enhance the capability of United States businesses to compete in foreign markets requires coordination of the development and implementation of Government policies relating to the international trade interests of the United States;

(7) effective and efficient Government action with respect to international trade further requires the employment of personnel consisting of individuals

who, like the personnel of the governments of United States trading partners, are highly experienced and educated in international trade operations and negotiations;

(8) the present organizational structure of Government administration of international trade activities is too diffuse and leads to inconsistent and conflicting policies and actions;

(9) such inconsistent and contradictory policies and actions inhibit domestic trade interests, create trade opportunities for our international competitors, and discourage experienced Government personnel from career service in international trade activities;

(10) United States performance in international trade is fundamentally linked to the competitiveness of American industry in the world economy;

(11) improvements in the competitiveness of United States industry, products, and services can be aided by reducing traditional antagonisms among government, industry, labor, and the public;

(12) a lack of analytical capability and knowledge concerning the competitive position of American industries and foreign industries greatly hampers or delays the ability of the United States to formulate responsible trade policies and policies that affect the international competitiveness of domestic industries;

(13) the consolidation of Government functions relating to international trade, including functions relating to technical analysis, policymaking, international negotiation, and operational responsibilities, into the United States Trade Administration shall provide the needed elevation and coordination of Government activity in international trade;

(14) the continued prosperity and overall competitive posture of the United States calls for a decisive and unified trade policy that vigorously promotes an equitable international trade environment in which the United States is able to compete fully and fairly;

(15) continued United States leadership in the world economy requires the formulation and implementation of a trade policy that is delineated and understood by the rest of the world; and

(16) establishing a decisive and unified trade policy has become a number one priority of the United States;

(17) enhancing the process of consultation and advice between the executive branch, the Congress, and the private sector will assist in developing the consensus on and support for the trade policy of the United States;

(18) there is no one single agency or department within the executive branch with overall responsibility for the development, coordination, implementation, and administration of the United States trade policy, and the proliferation and division of agencies within the executive branch have weakened the overall leadership of the United States in international trade matters; and

(19) the economic well-being of the American people will be substantially enhanced through the establishment of the United States Trade Administration.

SEC. 17402. DEFINITIONS.

For purposes of this subtitle, unless otherwise provided or indicated by the context—

(1) the term ''Administration'' means the United States Trade Administration;

(2) the term ''Federal agency'' has the meaning given to the term ''agency'' by section 551(1) of title 5, United States Code;

(3) the term ''function'' means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program;

(4) the term ''office'' includes any office, administration, agency, institute, unit, organizational entity, or component thereof; and

(5) the term ''USTR'' means the United States Trade Representative as provided for under section 3411.

CHAPTER 2—UNITED STATES TRADE ADMINISTRATION

SEC. 17411. ESTABLISHMENT OF THE ADMINISTRATION.

(a) IN GENERAL.—There is established the United States Trade Administration which shall be a free-standing establishment in the executive branch of Government as defined under section 104 of title 5, United States Code. The United States Trade Representative shall be the Administrator of the United States Trade Administration and shall be appointed by the President, by and with the advice and consent of the Senate.

(b) AMBASSADOR STATUS.—The USTR shall have the rank and status of Ambassador and shall represent the United States in all trade negotiations conducted by the Administration.

(c) SUCCESSOR TO DEPARTMENT OF COMMERCE.—The Administration shall be deemed to be the successor to the Department of Commerce for the purposes of protocol in any trade-related matter.

SEC. 17412. FUNCTIONS OF THE USTR.

(a) IN GENERAL.—In addition to the functions transferred to the USTR by this subtitle, such other functions as the President may assign or delegate to the USTR, and such other functions as the USTR may, after the effective date of this subtitle, be required to carry out by law, the USTR shall—

(1) serve as the principal advisor to the President on international trade policy and advise the President on the impact of other policies of the United States Government on international trade;

(2) exercise primary responsibility, with the advice of the interagency organization established under section 242 of the Trade Expansion Act of 1962, for developing and implementing international trade policy, including commodity matters and, to the extent related to international trade policy, direct investment matters and, in exercising such responsibility, advance and implement the goals described in section 17401(1) as the primary mandate of the Administration;

(3) exercise lead responsibility for the conduct of international trade negotiations, including international negotiations relating to commodity matters, intellectual property rights, services, and direct investment negotiations, in which the United States participates;

(4) exercise lead responsibility for the establishment of a national export strategy, including policies designed to implement such strategy;

(5) with the advice of the interagency organization established under section 242 of the Trade Expansion Act of 1962, issue policy guidance to other Federal agencies on international trade, commodity, and direct investment functions to the extent necessary to assure the coordination of international trade policy;

(6) have general operational responsibility for major nonagricultural international trade functions under Reorganization Plan No. 3 of 1979;

(7) seek and promote new opportunities for United States products and services to compete in the world marketplace;

(8) assist small businesses in developing export markets;

(9) enforce the laws of the United States relating to trade;

(10) analyze international economic trends and developments;

(11) report directly to the Congress on the administration of, and matters pertaining to, the trade agreements program under the Omnibus Trade and Competitiveness Act of 1988, the Trade Act of 1974, the Trade Expansion Act of 1962, and section 350 of the Tariff Act of 1930;

(12) report directly to the Congress, on an annual basis—

(A) the status of enforcement of international agreements to which the United States is a party that provide for the protection of intellectual property rights;

(B) analyses of the impact on United States citizens and businesses of piracy of intellectual property by foreign entities; and

(C) any recommendations for new international agreements to provide for the protection of intellectual property rights;

(13) keep each official adviser to the United States delegations to international conferences, meetings, and negotiation sessions relating to trade agreements who is appointed by a committee of the Senate or the House of Representatives under section 161 of the Trade Act of 1974 currently informed on United States negotiating objectives with respect to trade agreements, the status of negotiations in progress with respect to such agreements, and the nature of any changes in domestic law or the administration thereof which the USTR may recommend to the Congress to carry out any trade agreement;

(14) consult and cooperate with State and local governments and other interested parties on international trade matters of interest to such governments and parties, and to the extent related to international trade matters, on investment matters, and, when appropriate, hold informal public hearings;

(15) serve as the principal advisor to the President in identifying and assessing the consequences of any Government policies that adversely affect, or have the potential to adversely affect, the international competitiveness of United States industries and services;

(16) pursue the enforcement of international agreements to which the United States is a party that provide for the protection of intellectual property rights, seek new international agreements to minimize theft of intellectual property owned by United States citizens and businesses, and otherwise promote protection of intellectual property rights.

(b) INTERAGENCY ORGANIZATION.—The USTR shall chair the interagency organization established under section 242 of the Trade Expansion Act of 1962.

(c) NATIONAL SECURITY COUNCIL.—The USTR shall be a member of the National Security Council.

(d) ADVISORY COUNCIL.—The USTR shall be Deputy Chairman of the National Advisory Council on International Monetary and Financial Policies established under Executive Order 11269, issued February 14, 1966.

(e) AGRICULTURE.—(1) The USTR shall consult with the Secretary of Agriculture or the designee of the Secretary of Agriculture on all matters that potentially involve international trade in agricultural products.

(2) If an international meeting for negotiation or consultation includes discussion of international trade in agricultural products, the USTR or the designee of the USTR shall be Chairman of the United States delegation to such meeting and the Secretary of Agriculture or the designee of such Secretary shall be Vice Chairman. The provisions of this paragraph shall not limit the authority of the USTR under subsection (h) to assign to the Secretary of Agriculture responsibility for the conduct of, or participation in, any trade negotiation or meeting.

(f) TRADE PROMOTION.—The USTR shall be the chairperson of the Trade Promotion Coordinating Committee established under section 2312 of the Export Enhancement Act of 1988 (15 U.S.C. 4727).

(g) NATIONAL ECONOMIC COUNCIL.—The USTR shall be a member of the National Economic Council established under Executive Order No. 12835, issued January 25, 1993.

(h) INTERNATIONAL TRADE NEGOTIATIONS.—Except where expressly prohibited by law, the USTR, at the request or with the concurrence of the head of any other Federal agency, may assign the responsibility for conducting or participating in any specific international trade negotiation or meeting to the head of such agency whenever the USTR determines that the subject matter of such international trade negotiation is related to the functions carried out by such agency.

SEC. 17413. DEPUTY ADMINISTRATOR OF THE UNITED STATES TRADE ADMINISTRATION.

(a) ESTABLISHMENT.—There shall be in the Administration the Deputy Administrator of the United States Trade Administration, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) ABSENCE, DISABILITY, OR VACANCY OF USTR.—The Deputy Administrator of the United States Trade Administration shall act for and exercise the functions of the USTR during the absence or disability of the USTR or in the event the office of the USTR becomes vacant. The Deputy Administrator of the United States Trade Administration shall act for and exercise the functions of the USTR until the absence or disability of the USTR no longer exists or a successor to the USTR has been appointed by the President and confirmed by the Senate.

(c) FUNCTIONS OF DEPUTY ADMINISTRATOR OF THE UNITED STATES TRADE ADMINISTRATION.—The Deputy Administrator of the United States Trade Administration shall exercise all functions, under the direction of the USTR, transferred to or established in the Administration, except those functions exercised by the Deputy United States Trade Representatives, the Inspector General, and the General Counsel of the Administration, as provided by this subtitle.

SEC. 17414. DEPUTY UNITED STATES TRADE REPRESENTATIVES.

(a) ESTABLISHMENT.—There shall be in the Administration 2 Deputy United States Trade Representatives, who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy United States Trade Representatives shall exercise all functions under the direction of the USTR, and shall include—

(1) the Deputy United States Trade Representative for Negotiations; and

(2) the Deputy United States Trade Representative to the World Trade Organization.

(b) FUNCTIONS OF DEPUTY UNITED STATES TRADE REPRESENTATIVES.—(1) The Deputy United States Trade Representative for Negotiations shall exercise all functions transferred under section 17431 and shall have the rank and status of Ambassador.

(2) The Deputy United States Trade Representative to the World Trade Organization shall exercise all functions relating to representation to the World Trade Organization and shall have the rank and status of Ambassador.

SEC. 17415. ASSISTANT ADMINISTRATORS.

(a) ESTABLISHMENT.—There shall be in the Administration 3 Assistant Administrators, who shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Administrators shall exercise all functions under the direction of the Deputy Administrator of the United States Trade Administration and include—

(1) the Assistant Administrator for Export Administration;

(2) the Assistant Administrator for Import Administration; and

(3) the Assistant Administrator for Trade and Policy Analysis.

(b) FUNCTIONS OF ASSISTANT ADMINISTRATORS.—(1) The Assistant Administrator for Export Administration shall exercise all functions transferred under section 17432(a)(1)(C).

(2) The Assistant Administrator for Import Administration shall exercise all functions transferred under section 17432(a)(1)(D).

(3) The Assistant Administrator for Trade and Policy Analysis shall exercise all functions transferred under section 17432(a)(1)(B) and all functions transferred under section 17432(a)(2).

SEC. 17416. GENERAL COUNSEL.

There shall be in the Administration a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate. The General Counsel shall provide legal assistance to the USTR concerning the activities, programs, and policies of the Administration.

SEC. 17417. INSPECTOR GENERAL.

There shall be in the Administration an Inspector General who shall be appointed in accordance with the Inspector General Act of 1978, as amended by section 17471(b) of this Act.

SEC. 17418. CHIEF FINANCIAL OFFICER.

There shall be in the Administration a Chief Financial Officer who shall be appointed in accordance with section 901 of title 31, United States Code, as amended by section 17471(e) of this Act. The Chief Financial Officer shall perform all functions prescribed by the Deputy Administrator of the United States Trade Administration, under the direction of the Deputy Administrator.

CHAPTER 3—TRANSFERS TO THE ADMINISTRATION

SEC. 17431. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.

There are transferred to the USTR of the United States Trade Administration all functions of the United States Trade Representative and the Office of the United States Trade Representative in the Executive Office of the President and all functions of any officer or employee of such Office.

SEC. 17432. TRANSFERS FROM THE DEPARTMENT OF COMMERCE.

(a) IN GENERAL.—There are transferred to the USTR the following functions:

(1) All functions of, and all functions performed under the direction of, the following officers and employees of the Department of Commerce:

(A) The Under Secretary of Commerce for International Trade.

(B) The Assistant Secretary of Commerce for International Economic Policy and the Assistant Secretary of Commerce for Trade Development.

(C) The Under Secretary of Commerce for Export Administration.

(D) The Assistant Secretary of Commerce for Import Administration.

(2) All functions of the Secretary of Commerce relating to the National Trade Data Bank.

(3) All functions of the Secretary of Commerce under the Tariff Act of 1930, the Uruguay Round Agreements Act, the Trade Act of 1974, and other trade-related Acts for which responsibility is not otherwise assigned under this title.

(b) UNITED STATES AND FOREIGN COMMERCIAL SERVICE.—

(1) RENAMING AND ABOLITION OF CERTAIN FUNCTIONS.—The United States and Foreign Commercial Service shall, upon the effective date specified in section 17109(a), be known as the "United States Trade Service" (hereafter in this subsection referred to as the "USTS"). All operations of the USTS in the United States (other than those performed at the headquarters office referred to in section 2301(c) of the Export Enhancement Act of 1988 (15 U.S.C. 4721(c)) with respect to the foreign operations of the USTS) are abolished.

(2) TRANSFER TO USTR.—The USTS and its functions are transferred to the USTR. All functions performed immediately before the effective date specified

in section 17109(a) by the Secretary of Commerce or the Department of Commerce with respect to the USTS are transferred to the USTR.

(3) DIRECTOR GENERAL.—(A) There shall be a Director General of Trade who shall be appointed by the President, by and with the advice and consent of the Senate, who shall have the rank and status of Ambassador, and who shall be the head of the USTS and shall be responsible for other trade promotion functions of the Administration. The Director General of Trade shall report to the USTR.

(B) The individual serving as Assistant Secretary of Commerce and Director General of Trade immediately before the effective date specified in section 17109(a) may serve as the Director General of Trade on and after such effective date until a successor has taken office. Compensation for any service under this subparagraph shall be at the rate at which the individual was compensated immediately before the effective date specified in section 17109(a).

(4) TRANSFER OF USTS OFFICERS.—The transfer to the USTR pursuant to this section of any Commercial Service Officer serving immediately before the effective date specified in section 17109(a) shall not cause such officer to be reduced in rank, grade, or compensation.

SEC. 17433. TRADE AND DEVELOPMENT AGENCY.

(a) ABOLITION OF AGENCY.—The Trade and Development Agency is abolished.

(b) CONFORMING AMENDMENT.—Section 661 of the Foreign Assistance Act of 1961 (22 U.S.C. 2421) is repealed.

SEC. 17434. FUNCTIONS WITH RESPECT TO TEXTILE AGREEMENTS.

(a) TRANSFER OF FUNCTIONS.—Notwithstanding the provisions of Executive Order 11651 and Executive Order 12475 (7 U.S.C. 1854 note), the functions of the Committee for the Implementation of Textile Agreements (hereafter in this section referred to as "CITA") are transferred to the USTR, except for all functions related to the determination of the existence of serious damage or actual threat thereof to the domestic United States textile industry which are transferred to the International Trade Commission.

(b) ABOLITION OF CITA.—CITA is abolished.

SEC. 17435. PLAN FOR CONSOLIDATION OF TRADE ACTIVITIES.

Within 6 months after the date of the enactment of this Act, the USTR shall transmit to the Congress a comprehensive plan to consolidate Federal trade programs and activities. The plan shall provide for—

(1) an itemized summary of all Federal trade programs and activities identified by authorizing statute or executive order, including staff allocation and resource expenditures;

(2) a unified budget for reallocating Federal trade priorities;

(3) identification of and recommendations for the elimination of overlapping and duplicative missions and functions among Federal trade programs and activities; and

(4) identification of present cooperative activities among Federal, State, and private trade programs, and recommendations for Federal priorities and long-term opportunities for developing and increasing such cooperation.

CHAPTER 4—ADMINISTRATIVE PROVISIONS

SEC. 17441. PERSONNEL PROVISIONS.

(a) APPOINTMENTS.—The USTR may appoint and fix the compensation of such officers and employees, including investigators, attorneys, and administrative law judges, as may be necessary to carry out the functions of the USTR and the Administration. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code.

(b) POSITIONS ABOVE GS–15.—(1) At the request of the USTR, the Director of the Office of Personnel Management shall, under section 5108 of title 5, United States Code, provide for the establishment in a grade level above GS–15 of the General Service, and in the Senior Executive Service, of a number of positions in the Administration equal to the number of positions in that grade level which were used primarily for the performance of functions and offices transferred by this subtitle and which were assigned and filled on the day before the effective date of this subtitle.

(2) Appointments to positions provided for under this subsection may be made without regard to the provisions of section 3324 of title 5, United States Code, if the individual appointed in such position is an individual who is transferred in con-

nection with the transfer of functions and offices under this subtitle and, on the day before the effective date of this subtitle, holds a position and has duties comparable to those of the position to which appointed under this subsection.

(3) The authority under this subsection with respect to any position established at a grade level above GS–15 shall terminate when the person first appointed to fill such position ceases to hold such position.

(4) For purposes of section 414(a)(3)(A) of the Civil Service Reform Act of 1978, an individual appointed under this subsection shall be deemed to occupy the same position as the individual occupied on the day before the effective date of this subtitle.

(c) EXPERTS AND CONSULTANTS.—The USTR may obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate such experts and consultants for each day (including traveltime) at rates not in excess of the maximum rate of pay for a position at a grade level above GS–15 of the General Schedule under section 5332 of such title. The USTR may pay experts and consultants who are serving away from their homes or regular place of business travel expenses and per diem in lieu of subsistence at rates authorized by sections 5702 and 5703 of such title for persons in Government service employed intermittently.

(d) VOLUNTARY SERVICES.—(1)(A) The USTR is authorized to accept voluntary and uncompensated services without regard to the provisions of section 1342 of title 31, United States Code, if such services will not be used to displace Federal employees employed on a full-time, part-time, or seasonal basis.

(B) The USTR is authorized to accept volunteer service in accordance with the provisions of section 3111 of title 5, United States Code.

(2) The USTR is authorized to provide for incidental expenses, including but not limited to transportation, lodging, and subsistence for individuals who provide voluntary services under subparagraph (A) or (B) of paragraph (1).

(3) An individual who provides voluntary services under paragraph (1)(A) shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, United States Code, relating to compensation for work injuries, and chapter 171 of title 28, United States Code, relating to tort claims.

(e) FOREIGN SERVICE POSITIONS.—In order to assure United States representation in trade matters at a level commensurate with the level of representation maintained by industrial nations which are major trade competitors of the United States, the Secretary of State shall classify certain positions at Foreign Service posts as commercial minister positions and shall assign members of the Foreign Service performing functions of the Administration, with the concurrence of the USTR, to such positions in nations which are major trade competitors of the United States. The Secretary of State shall obtain and use the recommendations of the USTR with respect to the number of positions to be so classified under this subsection.

SEC. 17442. DELEGATION AND ASSIGNMENT.

Except where otherwise expressly prohibited by law or otherwise provided by this subtitle, the USTR may delegate any of the functions transferred to the USTR by this subtitle and any function transferred or granted to the USTR after the effective date of this subtitle to such officers and employees of the Administration as the USTR may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions by the USTR under this section or under any other provision of this subtitle shall relieve the USTR of responsibility for the administration of such functions.

SEC. 17443. SUCCESSION.

(a) ORDER OF SUCCESSION.—Subject to the authority of the President, and except as provided in section 3413(b), the USTR shall prescribe the order by which officers of the Administration who are appointed by the President, by and with the advice and consent of the Senate, shall act for, and perform the functions of, the USTR or any other officer of the Administration appointed by the President, by and with the advice and consent of the Senate, during the absence or disability of the USTR or such other officer, or in the event of a vacancy in the office of the USTR or such other officer.

(b) CONTINUATION.—Notwithstanding any other provision of law, and unless the President directs otherwise, an individual acting for the USTR or another officer of the Administration pursuant to subsection (a) shall continue to serve in that capacity until the absence or disability of the USTR or such other officer no longer exists or a successor to the USTR or such other officer has been appointed by the President and confirmed by the Senate.

SEC. 17444. REORGANIZATION.

(a) IN GENERAL.—Subject to subsection (b), the USTR is authorized to allocate or reallocate functions among the officers of the Administration, and to establish, consolidate, alter, or discontinue such organizational entities in the Administration as may be necessary or appropriate.

(b) EXCEPTION.—The USTR may not exercise the authority under subsection (a) to establish, consolidate, alter, or discontinue any organizational entity in the Administration or allocate or reallocate any function of an officer or employee of the Administration that is inconsistent with any specific provision of this subtitle.

SEC. 17445. RULES.

The USTR is authorized to prescribe, in accordance with the provisions of chapters 5 and 6 of title 5, United States Code, such rules and regulations as the USTR determines necessary or appropriate to administer and manage the functions of the USTR or the Administration.

SEC. 17446. FUNDS TRANSFER.

The USTR may, when authorized in an appropriation Act in any fiscal year, transfer funds from one appropriation to another within the Administration, except that no appropriation for any fiscal year shall be either increased or decreased by more than 10 percent and no such transfer shall result in increasing any such appropriation above the amount authorized to be appropriated therefor.

SEC. 17447. CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.

(a) IN GENERAL.—Subject to the provisions of the Federal Property and Administrative Services Act of 1949, the USTR may make, enter into, and perform such contracts, leases, cooperative agreements, grants, or other similar transactions with public agencies, private organizations, and persons, and make payments (in lump sum or installments, and by way of advance or reimbursement, and, in the case of any grant, with necessary adjustments on account of overpayments and underpayments) as the USTR considers necessary or appropriate to carry out the functions of the USTR or the Administration.

(b) EXCEPTION.—Notwithstanding any other provision of this subtitle, the authority to enter into contracts or to make payments under this subtitle shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. This subsection does not apply with respect to the authority granted under section 449.

SEC. 17448. USE OF FACILITIES.

(a) USE BY USTR.—With their consent, the USTR, with or without reimbursement, may use the research, services, equipment, and facilities of—

(1) an individual,

(2) any public or private nonprofit agency or organization, including any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States,

(3) any political subdivision of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or

(4) any foreign government,

in carrying out any function of the USTR or the Administration.

(b) USE OF USTR FACILITIES.—The USTR, under terms, at rates, and for periods that the USTR considers to be in the public interest, may permit the use by public and private agencies, corporations, associations or other organizations, or individuals, of any real property, or any facility, structure or other improvement thereon, under the custody of the USTR. The USTR may require permittees under this section to maintain or recondition, at their own expense, the real property, facilities, structures, and improvements used by such permittees.

SEC. 17449. GIFTS AND BEQUESTS.

(a) IN GENERAL.—The USTR is authorized to accept, hold, administer, and utilize gifts and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Administration. Gifts and bequests of money and the proceeds from sales of other property received as gifts or bequests shall be deposited in the United States Treasury in a separate fund and shall be disbursed on order of the USTR. Property accepted pursuant to this subsection, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift or bequest.

(b) TAX TREATMENT.—For the purpose of Federal income, estate, and gift taxes, and State taxes, property accepted under subsection (a) shall be considered a gift or bequest to or for the use of the United States.

(c) INVESTMENT.—Upon the request of the USTR, the Secretary of the Treasury may invest and reinvest in securities of the United States or in securities guaranteed as to principal and interest by the United States any moneys contained in the fund provided for in subsection (a). Income accruing from such securities, and from any other property held by the USTR pursuant to subsection (a), shall be deposited to the credit of the fund, and shall be disbursed upon order of the USTR.

SEC. 17450. WORKING CAPITAL FUND.

(a) ESTABLISHMENT.—The USTR is authorized to establish for the Administration a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as the USTR shall find to be desirable in the interest of economy and efficiency, including—

(1) a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Administration and its components;

(2) central messenger, mail, and telephone service and other communications services;

(3) office space and central services for document reproduction and for graphics and visual aids;

(4) a central library service; and

(5) such other services as may be approved by the Director of the Office of Management and Budget.

(b) OPERATION OF FUND.—The capital of the fund shall consist of any appropriations made for the purpose of providing working capital and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the USTR may transfer to the fund, less the related liabilities and unpaid obligations. The fund shall be reimbursed in advance from available funds of agencies and offices in the Administration, or from other sources, for supplies and services at rates which will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the United States Treasury as miscellaneous receipts any surplus of the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain the fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to those services which the USTR determines will be performed.

SEC. 17451. SERVICE CHARGES.

(a) AUTHORITY.—Notwithstanding any other provision of law, the USTR may establish reasonable fees and commissions with respect to applications, documents, awards, loans, grants, research data, services, and assistance administered by the Administration, and the USTR may change and abolish such fees and commissions. Before establishing, changing, or abolishing any schedule of fees or commissions under this section, the USTR may submit such schedule to the Congress.

(b) DEPOSITS.—The USTR is authorized to require a deposit before the USTR provides any item, information, service, or assistance for which a fee or commission is required under this section.

(c) DEPOSIT OF MONEYS.—Moneys received under this section shall be deposited in the Treasury in a special account for use by the USTR and are authorized to be appropriated and made available until expended.

(d) FACTORS IN ESTABLISHING FEES AND COMMISSIONS.—In establishing reasonable fees or commissions under this section, the USTR may take into account—

(1) the actual costs which will be incurred in providing the items, information, services, or assistance concerned;

(2) the efficiency of the Government in providing such items, information, services, or assistance;

(3) the portion of the cost that will be incurred in providing such items, information, services, or assistance which may be attributed to benefits for the general public rather than exclusively for the person to whom the items, information, services, or assistance is provided;

(4) any public service which occurs through the provision of such items, information, services, or assistance; and

(5) such other factors as the USTR considers appropriate.

(e) REFUNDS OF EXCESS PAYMENTS.—In any case in which the USTR determines that any person has made a payment which is not required under this section or has made a payment which is in excess of the amount required under this section, the USTR, upon application or otherwise, may cause a refund to be made from applicable funds.

SEC. 17452. SEAL OF DEPARTMENT.

The USTR shall cause a seal of office to be made for the Administration of such design as the USTR shall approve. Judicial notice shall be taken of such seal.

CHAPTER 5—RELATED AGENCIES

SEC. 17461. INTERAGENCY TRADE ORGANIZATION.

Section 242(a)(3) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)(3)) is amended to read as follows:

"(3)(A) The interagency organization established under subsection (a) shall be composed of—

"(i) the United States Trade Representative, who shall be the chairperson,

"(ii) the Secretary of Agriculture,

"(iii) the Secretary of the Treasury,

"(iv) the Secretary of Labor,

"(v) the Secretary of State, and

"(vi) the representatives of such other departments and agencies as the United States Trade Representative shall designate.

"(B) The United States Trade Representative may invite representatives from other agencies, as appropriate, to attend particular meetings if subject matters of specific functional interest to such agencies are under consideration. It shall meet at such times and with respect to such matters as the President or the chairperson shall direct.".

SEC. 17462. NATIONAL SECURITY COUNCIL.

The fourth paragraph of section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended—

(1) by redesignating clauses (5), (6), and (7) as clauses (6), (7), and (8), respectively; and

(2) by inserting after clause (4) the following new clause:

"(5) the United States Trade Representative;".

SEC. 17463. INTERNATIONAL MONETARY FUND.

Section 3 of the Bretton Woods Agreement Act is amended by adding at the end the following new subsection:

"(e) The United States executive director of the Fund shall consult with the United States Trade Representative with respect to matters under consideration by the Fund which relate to trade.".

CHAPTER 6—CONFORMING AMENDMENTS

SEC. 17471. AMENDMENTS TO GENERAL PROVISIONS.

(a) PRESIDENTIAL SUCCESSION.—Section 19(d)(1) of title 3, United States Code, is amended by inserting "the United States Trade Representative," before "Secretary of Labor,".

(b) INSPECTOR GENERAL.—The Inspector General Act of 1978 is amended—

(1) in subsection 9(a)(1) by inserting after subparagraph (W) the following:

"(X) of the United States Trade Representative, all functions of the Inspector General of the Department of Commerce and the Office of the Inspector General of the Department of Commerce relating to the functions transferred to the United States Trade Representative by section 3432 of the Department of Commerce Dismantling Act; and"; and

(2) in section 11—

(A) in paragraph (1) by inserting "the United States Trade Representative;" after "the Attorney General;"; and

(B) in paragraph (2) by inserting "the United States Trade Administration," after "Treasury;".

(c) AMENDMENT TO THE TRADE ACT OF 1974.—(1) Chapter 4 of title I of the Trade Act of 1974 is amended to read as follows:

“CHAPTER 4—REPRESENTATION IN TRADE NEGOTIATIONS

“SEC. 141. FUNCTIONS OF THE UNITED STATES TRADE REPRESENTATIVE.

“The United States Trade Representative of the United States Trade Administration established under section 201 of the Trade Reorganization Act of 1995 shall—

“(1) be the chief representative of the United States for each trade negotiation under this chapter or chapter 1 of title III of this Act, or subtitle A of title I of the Omnibus Trade and Competitiveness Act of 1988, or any other provision of law enacted after the Department of Commerce Dismantling Act;

“(2) report directly to the President and the Congress, and be responsible to the President and the Congress for the administration of trade agreements programs under this Act, the Omnibus Trade and Competitiveness Act of 1988, the Trade Expansion Act of 1962, section 350 of the Tariff Act of 1930, and any other provision of law enacted after the Department of Commerce Dismantling Act;

“(3) advise the President and the Congress with respect to nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements programs; and

“(4) be responsible for making reports to Congress with respect to the matters set forth in paragraphs (1) and (2).”.

(2) The table of contents in the first section of the Trade Act of 1974 is amended by striking the items relating to chapter 4 and section 141 and inserting the following:

(d) FOREIGN SERVICE PERSONNEL.—The Foreign Service Act of 1980 is amended by striking paragraph (3) of section 202(a) (22 U.S.C. 3922(a)) and inserting the following:

“(3) The United States Trade Representative of the United States Trade Administration may utilize the Foreign Service personnel system in accordance with this Act—

“(A) with respect to the personnel performing functions—

“(i) which were transferred to the Department of Commerce from the Department of State by Reorganization Plan No. 3 of 1979; and

“(ii) which were subsequently transferred to the United States Trade Representative by section 17432 of the Department of Commerce Dismantling Act; and

“(B) with respect to other personnel of the United States Trade Administration to the extent the President determines to be necessary in order to enable the United States Trade Administration to carry out functions which require service abroad.”.

(e) CHIEF FINANCIAL OFFICERS.—Section 901(b)(1) of title 31, United States Code, is amended by adding at the end the following:

“(Q) The United States Trade Administration.”.

SEC. 17472. REPEALS.

Sections 1 and 2 of the Act of June 5, 1939 (15 U.S.C. 1502 and 1503; 53 Stat. 808), relating to the Under Secretary of Commerce, are repealed.

SEC. 17473. CONFORMING AMENDMENTS RELATING TO EXECUTIVE SCHEDULE POSITIONS.

(a) POSITIONS AT LEVEL I.—Section 5312 of title 5, United States Code, is amended by amending the item relating to the United States Trade Representative to read as follows:

“United States Trade Representative, United States Trade Administration.”.

(b) POSITIONS AT LEVEL II.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

“Deputy Administrator of the United States Trade Administration.

“Deputy United States Trade Representatives, United States Trade Administration (2).

“Director General of Trade, United States Trade Administration (2).”.

(c) POSITIONS AT LEVEL III.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

“Assistant Administrators, United States Trade Administration (3).”.

(d) POSITIONS AT LEVEL IV.—Section 5315 of title 5, United States Code, is amended—

(1) by striking the item relating to the Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service; and

(2) by adding at the end the following:

"General Counsel, United States Trade Administration.

"Inspector General, United States Trade Administration.

"Chief Financial Officer, United States Trade Administration.".

CHAPTER 7—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

SEC. 17481. ADDITIONAL TRANSFERS.

Any function of the Secretary of Commerce or the Department of Commerce which—

(1) is not transferred by this subtitle; and

(2) is incidental to, necessary for, or primarily related to, the performance of a function transferred by this subtitle,

is transferred to the head of the Federal agency to which the related function is transferred by this subtitle.

SEC. 17482. INCIDENTAL TRANSFERS.

After consultation with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget is authorized, at such times as the Director of the Office of Management and Budget may provide, to make such determinations as may be necessary with regard to the transfer of positions within the Senior Executive Service in connection with the functions and offices transferred by this subtitle.

SEC. 17483. EFFECT ON PERSONNEL.

(a) IN GENERAL.—Except as otherwise provided by this subtitle, the transfer pursuant to this subtitle of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer of such employee under this subtitle.

(b) EXECUTIVE SCHEDULE POSITIONS.—Except as otherwise provided by this subtitle, any person who, on the day preceding the effective date of this subtitle, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in a Federal agency to which functions are transferred by this subtitle to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

(c) TERMINATION OF CERTAIN POSITIONS.—Except for members of the Foreign Service, positions whose incumbents are appointed by the President, by and with the advice and consent of the Senate, the functions of which are transferred by this subtitle, shall terminate on the effective date of this subtitle.

SEC. 17484. SAVINGS PROVISIONS.

(a) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF RULES.—Any administrative action relating to the preparation or promulgation of a regulation by a Federal agency relating to a function transferred under this subtitle may be continued by the Federal agency to which such function is transferred with the same effect as if this subtitle had not been enacted.

(b) FEDERAL OFFICIAL AS PARTY IN ACTION.—If, before the date on which this subtitle takes effect, the Office of the United States Trade Representative, or any officer thereof in his or her official capacity, is a party to an action with respect to a function transferred by this subtitle to a Federal agency, then such action shall be continued with the head of the agency substituted or added as a party.

(c) JUDICIAL REVIEW.—Orders and actions of the head of a Federal agency in the exercise of functions transferred to the head of such agency by this subtitle shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the Department of Commerce or the Office of the United States Trade Representative, or any office or officer thereof, in the exercise of such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this subtitle shall apply to the exercise of such function by the head of the Federal agency to which such function is transferred by this subtitle.

SEC. 17485. REFERENCE.

With respect to any functions transferred by this subtitle and exercised after the effective date of this subtitle, reference in any other Federal law to—

(1) the Secretary of Commerce or the United States Trade Representative; or

(2) the Department of Commerce or the Office of the United States Trade Representative or any officer or office thereof,

shall be considered to refer to the head of the Federal agency to whom such functions were transferred by this subtitle.

SEC. 17486. TRANSITION.

With the consent of the Secretary of Commerce or the United States Trade Representative, as the case may be, the head of each Federal agency to which functions or offices are transferred by this subtitle is authorized to utilize—

(1) the services of such officers, employees, and other personnel of the Department of Commerce or the Office of the United States Trade Representative, as the case may be, with respect to functions or offices transferred to that agency by this subtitle; and

(2) funds appropriated to such functions or offices for such period of time as may reasonably be needed to facilitate the orderly implementation of this subtitle.

CHAPTER 8—MISCELLANEOUS

SEC. 17491. EFFECTIVE DATE.

(a) IN GENERAL.—This subtitle shall take effect on the effective date specified in section 17109(a), except that at any time after the date of the enactment of this Act the officers provided for in chapter 2 may be nominated and appointed, as provided in such chapter.

(b) INTERIM COMPENSATION AND EXPENSES.—Funds available to the Department of Commerce or the Office of the United States Trade Representative (or any official or component thereof), with respect to the functions transferred by this subtitle, may be used, with approval of the Director of the Office of Management and Budget, to pay the compensation and expenses of an officer appointed under subsection (a) who will carry out such functions until funds for that purpose are otherwise available.

SEC. 17492. INTERIM APPOINTMENTS.

(a) IN GENERAL.—If one or more officers required by this subtitle to be appointed by and with the advice and consent of the Senate have not entered upon office on the effective date of this subtitle and notwithstanding any other provision of law, the President may designate any officer who was appointed by and with the advice and consent of the Senate, and who was such an officer on the day before the effective date of this subtitle, to act in the office until it is filled as provided by this subtitle.

(b) COMPENSATION.—Any officer acting in an office pursuant to subsection (a) shall receive compensation at the rate prescribed by this subtitle for such office.

SEC. 17493. FUNDING REDUCTIONS RESULTING FROM REORGANIZATION.

(a) FUNDING REDUCTIONS.—Notwithstanding section 17610, beginning in the first fiscal year that begins on or after the effective date of this subtitle, the amount expended by the United States in performing all functions which, immediately before the effective date of this subtitle, were performed by the Department of Commerce or any agency, officer, or employee thereof and are transferred by this subtitle may not exceed 75 percent of the total amount expended by the United States in performing all such functions during fiscal year 1994.

(b) IMPLEMENTATION PLAN.—(1) Not later than 90 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall submit a report to the Congress on a plan that—

(A) provides for the implementation of the funding reductions required under subsection (a); and

(B) makes legislative recommendations for additional authority necessary or useful in implementing such funding reductions.

(2) In preparing the report, the Office of Management and Budget shall consult with the USTR.

SEC. 17494. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subtitle. Amounts appropriated under this section shall be available until expended.

SUBTITLE E—PATENT AND TRADEMARK OFFICE CORPORATION

SEC. 17501. SHORT TITLE.

This subtitle may be cited as the ''Patent and Trademark Office Corporation Act of 1995''.

CHAPTER 1—PATENT AND TRADEMARK OFFICE

SEC. 17511. ESTABLISHMENT OF PATENT AND TRADEMARK OFFICE AS A CORPORATION.

Section 1 of title 35, United States Code, is amended to read as follows:

''§ 1. Establishment

''(a) ESTABLISHMENT.—The Patent and Trademark Office is established as a wholly owned Government corporation subject to chapter 91 of title 31, except as otherwise provided in this title.

''(b) OFFICES.—The Patent and Trademark Office shall maintain an office in the District of Columbia, or the metropolitan area thereof, for the service of process and papers and shall be deemed, for purposes of venue in civil actions, to be a resident of the District of Columbia. The Patent and Trademark Office may establish offices in such other places as it considers necessary or appropriate in the conduct of its business.

''(c) REFERENCE.—For purposes of this title, the Patent and Trademark Office shall also be referred to as the 'Office'.''.

SEC. 17512. POWERS AND DUTIES.

Section 2 of title 35, United States Code, is amended to read as follows:

''§ 2. Powers and Duties

''(a) IN GENERAL.—The Patent and Trademark Office shall be responsible for—

''(1) the granting and issuing of patents and the registration of trademarks;

''(2) conducting studies, programs, or exchanges of items or services regarding domestic and international patent and trademark law or the administration of the Office, including programs to recognize, identify, assess, and forecast the technology of patented inventions and their utility to industry;

''(3) authorizing or conducting studies and programs cooperatively with foreign patent and trademark offices and international organizations, in connection with the granting and issuing of patents and the registration of trademarks; and

''(4) disseminating to the public information with respect to patents and trademarks.

''(b) SPECIFIC POWERS.—The Office—

''(1) shall have perpetual succession;

''(2) shall adopt and use a corporate seal, which shall be judicially noticed and with which letters patent, certificates of trademark registrations, and papers issued by the Office shall be authenticated;

''(3) may sue and be sued in its corporate name and be represented by its own attorneys in all judicial and administrative proceedings;

''(4) may indemnify the Commissioner of Patents and Trademarks, and other officers, attorneys, agents, and employees (including members of the Management Advisory Board established in section 5), of the Office for liabilities and expenses incurred within the scope of their employment;

''(5) may adopt, amend, and repeal bylaws, rules, and regulations, governing the manner in which its business will be conducted and the powers granted to it by law will be exercised, without regard to chapter 35 of title 44;

''(6) may acquire, construct, purchase, lease, hold, manage, operate, improve, alter, and renovate any real, personal, or mixed property, or any interest therein, as it considers necessary to carry out its functions, without regard to the provisions of the Federal Property and Administrative Services Act of 1949;

''(7)(A) may make such purchases, contracts for the construction, maintenance, or management and operation of facilities, and contracts for supplies or services, after advertising, in such manner and at such times sufficiently in advance of opening bids, as the Office determines is adequate to ensure notice and an opportunity for competition, except that advertising shall not be required when the Office determines that the making of any such purchase or contract without advertising is necessary, or that advertising is not reasonably practicable;

"(B) may enter into and perform such purchases and contracts for printing services, including the process of composition, platemaking, presswork, silk screen processes, binding, microform, and the products of such processes, as it considers necessary to carry out the functions of the Office, without regard to sections 501 through 517 and 1101 through 1123 of title 44; and

"(C) may enter into and perform such other contracts, leases, cooperative agreements, or other transactions with international, foreign, and domestic public agencies and private organizations, and persons as is necessary in the conduct of its business and on such terms as it considers appropriate;

"(8) may use, with their consent, services, equipment, personnel, and facilities of other departments, agencies, and instrumentalities of the Federal Government, on a reimbursable basis, and to cooperate with such other departments, agencies, and instrumentalities in the establishment and use of services, equipment, and facilities of the Office;

"(9) may obtain from the Administrator of General Services such services as the Administrator is authorized to provide to other agencies of the United States, on the same basis as those services are provided to other agencies of the United States;

"(10) may use, with the consent of the agency, government, or international organization concerned, the services, records, facilities, or personnel of any State or local government agency or instrumentality or foreign government or international organization to perform functions on its behalf;

"(11) may determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to the provisions of this title and the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946');

"(12) may retain and use all of its revenues and receipts, including revenues from the sale, lease, or disposal of any real, personal, or mixed property, or any interest therein, of the Office, in carrying out the functions of the Office, including for research and development and capital investment, without apportionment under the provisions of subchapter II of chapter 15 of title 31;

"(13) shall have the priority of the United States with respect to the payment of debts from bankrupt, insolvent, and decedents' estates;

"(14) may accept monetary gifts or donations of services, or of real, personal, or mixed property, in order to carry out the functions of the Office;

"(15) may execute, in accordance with its bylaws, rules, and regulations, all instruments necessary and appropriate in the exercise of any of its powers;

"(16) may provide for liability insurance and insurance against any loss in connection with its property, other assets, or operations either by contract or by self-insurance; and

"(17) shall pay any settlement or judgment entered against it from the funds of the Office and not from amounts available under section 1304 of title 31.".

SEC. 17513. ORGANIZATION AND MANAGEMENT.

Section 3 of title 35, United States Code, is amended to read as follows:

"§ 3. Officers and employees

"(a) COMMISSIONER.—

"(1) IN GENERAL.—The management of the Patent and Trademark Office shall be vested in the Commissioner of Patents and Trademarks (hereafter in this title referred to as the 'Commissioner'), who shall be a citizen of the United States and who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner shall be a person who, by reason of professional background and experience in patent and trademark law, is especially qualified to manage the Office.

"(2) DUTIES.—

"(A) IN GENERAL.—The Commissioner shall be responsible for the management and direction of the Office, including the issuance of patents and the registration of trademarks.

"(B) ADVISING THE PRESIDENT.—The Commissioner shall advise the President of all activities of the Patent and Trademark Office undertaken in response to obligations of the United States under treaties and executive agreements, or which relate to cooperative programs with those authorities of foreign governments that are responsible for granting patents or registering trademarks. The Commissioner shall also recommend to the President changes in law or policy which may improve the ability of U.S. citizens to secure and enforce patent rights or trademark rights in the United States or in foreign countries.

"(C) CONSULTING WITH THE MANAGEMENT ADVISORY BOARD.—The Commissioner shall consult with the Management Advisory Board established in section 5 on a regular basis on matters relating to the operation of the Patent and Trademark Office, and shall consult with the Board before submitting budgetary proposals to the Office of Management and Budget or changing or proposing to change patent or trademark user fees or patent or trademark regulations.

"(3) TERM.—The Commissioner shall serve a term of six years, and may continue to serve until a successor is appointed and assumes office. The Commissioner may be reappointed to subsequent terms.

"(4) OATH.—The Commissioner shall, before taking office, take an oath to discharge faithfully the duties of the Office.

"(5) COMPENSATION.—The Commissioner shall receive compensation at the rate of pay in effect for level II of the Executive Schedule under section 5313 of title 5.

"(6) REMOVAL.—The Commissioner may be removed from office by the President only for cause.

"(7) DESIGNEE OF COMMISSIONER.—The Commissioner shall designate an officer of the Office who shall be vested with the authority to act in the capacity of the Commissioner in the event of the absence or incapacity of the Commissioner.

"(b) OFFICERS AND EMPLOYEES OF THE OFFICE.—

"(1) DEPUTY COMMISSIONERS.—The Commissioner shall appoint a Deputy Commissioner for Patents and a Deputy Commissioner for Trademarks for terms that shall expire on the date on which the Commissioner's term expires. The Deputy Commissioner for Patents shall be a person with demonstrated experience in patent law and the Deputy Commissioner for Trademarks shall be a person with demonstrated experience in trademark law. The Deputy Commissioner for Patents and the Deputy Commissioner for Trademarks shall be the principal policy advisors to the Commissioner on all aspects of the activities of the Office that affect the administration of patent and trademark operations, respectively.

"(2) OTHER OFFICERS AND EMPLOYEES.—The Commissioner shall—

"(A) appoint an Inspector General and such other officers, employees (including attorneys), and agents of the Office as the Commissioner considers necessary to carry out its functions;

"(B) fix the compensation of such officers and employees, subject to the limits set forth in subsection (c); and

"(C) define the authority and duties of such officers and employees and delegate to them such of the powers vested in the Office as the Commissioner may determine.

The Office shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the Office shall be taken into account for purposes of applying any such limitation, except to the extent otherwise specifically provided by statute with respect to the Office.

"(c) LIMITS ON COMPENSATION.—Except as otherwise provided in this title or any other provision of law, the basic pay of an officer or employee of the Office for any calendar year may not exceed the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5. The Commissioner shall by regulation establish a limitation on the total compensation payable to officers or employees of the Office, consistent with the limitation under section 5307 of title 5.

"(d) INAPPLICABILITY OF TITLE 5 GENERALLY.—Except as otherwise provided in this section, officers and employees of the Office shall not be subject to the provisions of title 5 relating to Federal employees.

"(e) CARRYOVER OF PERSONNEL.—

"(1) TO THE OFFICE.—Effective as of the effective date of the Patent and Trademark Office Corporation Act of 1995, all officers and employees of the Patent and Trademark Office on the day before such effective date shall become officers and employees of the Office, without a break in service.

"(2) CONTINUATION IN OFFICE OF CERTAIN OFFICERS.—

"(A) COMMISSIONER OF PATENTS AND TRADEMARKS.—The individual serving as the Commissioner of Patents and Trademarks on the day before the effective date of the Patent and Trademark Office Corporation Act of 1995 may serve as the Commissioner for a period of 1 year beginning on such effective date or, if earlier, until a Commissioner has been appointed under subsection (a).

"(B) ASSISTANT COMMISSIONER FOR PATENTS.—The individual serving as the Assistant Commissioner for Patents on the day before the effective date of the Patent and Trademark Office Corporation Act of 1995 may serve as the Deputy Commissioner for Patents for a period of 1 year beginning on such effective date or, if earlier, until a Deputy Commissioner for Patents has been appointed under subsection (b).

"(C) ASSISTANT COMMISSIONER FOR TRADEMARKS.—The individual serving as the Assistant Commissioner for Trademarks on the day before the effective date of the Patent and Trademark Office Corporation Act of 1995 may serve as the Deputy Commissioner for Trademarks for a period of 1 year beginning on such effective date or, if earlier, until a Deputy Commissioner for Trademarks has been appointed under subsection (b).

"(f) EMPLOYEE PROTECTION.—Not later than the effective date of the Patent and Trademark Office Corporation Act of 1995, the Commissioner shall, notwithstanding section 3531 of such Act, take appropriate measures to protect the employment interests of individuals who become employees of the Office pursuant to subsection (e)(1). Such measures shall include provisions to ensure that—

"(1) the Office will adopt labor agreements in accordance with subsection (g);

"(2) no such individual shall, during the 2-year period commencing on the effective date of the Patent and Trademark Office Corporation Act of 1995, be subject to separation or any reduction in compensation by reason of the establishment of the Office as a Government corporation pursuant to such Act;

"(3) all sick leave, annual leave, and compensatory time accrued or accumulated under title 5 before the start of such 2-year period shall be obligations of the Office during such period; and

"(4) there shall be made available to such employees not less than 1 life insurance program and not less than 3 health insurance programs, during such 2-year period, which shall be reasonably comparable, in terms of employee premium cost and coverage, to the Federal health and life insurance programs available to such employees on the day before the start of such period.

"(g) LABOR AGREEMENTS.—

"(1) ADOPTION OF EXISTING AGREEMENTS.—The Office shall adopt all labor agreements which are in effect, as of the day before the effective date of the Patent and Trademark Office Corporation Act of 1995, with respect to such Office (as then in effect). Each such agreement shall remain in effect for the 2-year period commencing on such date, unless the agreement provides for a shorter duration or the parties agree otherwise before such period ends.

"(2) CONTINUED APPLICABILITY OF CHAPTER 71.—Chapter 71 of title 5 shall continue to apply with respect to the Office after the Patent and Trademark Office Corporation Act of 1995 takes effect.

"(h) TERMINATION RIGHTS.—Any employee referred to in the first sentence of subsection (f) whose employment with the Office is terminated during the 2-year period commencing on the effective date of the Patent and Trademark Office Corporation Act of 1995 shall be entitled to rights and benefits, to be afforded by the Office, similar to those such employee would have had under Federal law if termination had occurred immediately before such date.

"(i) RETIREMENT.—

"(1) CONTINUED COVERAGE.—Any employee referred to in the first sentence of subsection (f) who, on the day before the effective date of the Patent and Trademark Office Corporation Act of 1995, is subject to subchapter III of chapter 83 of title 5 or chapter 84 of such title shall, so long as such employee remains employed by the Office without a break in service, remain subject to such subchapter or chapter, as the case may be. Any employment that satisfies the preceding sentence shall be considered employment by the Government of the United States for purposes of such subchapter or chapter. During any such employment, the Office shall be considered to be the employing agency of the employee and shall make all agency contributions required under such subchapter or chapter with respect to such employee.

"(2) DEPOSIT REQUIREMENT.—Not later than 1 year after the effective date of the Patent and Trademark Office Corporation Act of 1995, the Office shall pay into the Treasury of the United States, to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the present value of the difference between (A) the future cost of benefits payable from the Fund and due the employees referred to in the first sentence of subsection (f) that are attributable to employment on or after the effective date of the Patent and Trademark Office Corporation Act of 1995, and (B) the contributions made by such employees and the Office under paragraph (1). In determining the amount due, the Office of Personnel Management shall take into consideration the actual interest such amount can be expected to earn when invested in the Treasury.

"(j) COMPETITIVE STATUS.—For purposes of appointment to a position in the competitive service for which an officer or employee of the Office is qualified, such officer or employee—

"(1) shall not forfeit any competitive status, acquired by such officer or employee before the effective date of the Patent and Trademark Office Corporation Act of 1995, by reason of becoming an officer or employee of the Office pursuant to subsection (e)(1); or

"(2) if not covered by paragraph (1), shall acquire competitive status after completing at least 1 year of continuous service under a nontemporary appointment to a position within the Office (taking into account any such service performed with the former Patent and Trademark Office immediately before such effective date).

"(k) SAVINGS PROVISIONS.—All orders, determinations, rules, and regulations regarding compensation and benefits and other terms and conditions of employment, in effect for the Office and its officers and employees immediately before the effective date of the Patent and Trademark Office Corporation Act of 1995, shall continue in effect with respect to the Office and its officers and employees until modified, superseded, or set aside by the Office or a court of appropriate jurisdiction or by operation of law.".

SEC. 17514. MANAGEMENT ADVISORY BOARD.

Chapter 1 of part I of title 35, United States Code, is amended by inserting after section 4 the following:

"§ 5. Patent and Trademark Office Management Advisory Board

"(a) COMPENSATION.—

"(1) APPOINTMENT.—The Patent and Trademark Office shall have a Management Advisory Board (hereafter in this title referred to as the 'Board') of 18 members, 6 of whom shall be appointed by the President, 6 of whom shall be appointed by the Speaker of the House of Representatives, and 6 of whom shall be appointed by the President pro tempore of the Senate. Not more than 4 of the 6 members appointed by each appointing authority shall be members of the same political party.

"(2) TERMS.—Members of the Board shall be appointed for a term of 6 years each, except that of the members first appointed by each appointing authority, 1 shall be for a term of 1 year, 1 shall be for a term of 2 years, 1 shall be for a term of 3 years, 1 shall be for a term of 4 years, and 1 shall be for a term of 5 years. No member may serve more than 1 term.

"(3) CHAIR.—The President shall designate the chair of the Board, whose term as chair shall be for 3 years.

"(4) TIMING OF APPOINTMENTS.—Initial appointments to the Board shall be made within 3 months after the effective date of the Patent and Trademark Office Corporation Act of 1995, and vacancies shall be filled within 3 months after they occur.

"(5) VACANCIES.—Vacancies shall be filled in the manner in which the original appointment was made under this subsection. Members appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor is appointed.

"(b) BASIS FOR APPOINTMENTS.—Members of the Board shall be citizens of the United States who shall be chosen so as to represent the interests of diverse users of the Patent and Trademark Office, and shall include individuals with substantial background and achievement in corporate finance and management.

"(c) APPLICABILITY OF CERTAIN ETHICS LAWS.—Members of the Board shall be special Government employees within the meaning of section 202 of title 18.

"(d) MEETINGS.—The Board shall meet at the call of the chair to consider an agenda set by the chair.

"(e) DUTIES.—The Board shall—

"(1) review the policies, goals, performance, budget, and user fees of the Patent and Trademark Office, and advise the Commissioner on these matters; and

"(2) within 60 days after the end of each fiscal year, prepare an annual report on the matters referred to in paragraph (1), transmit the report to the President and the Committees on the Judiciary of the Senate and the House of Representatives, and publish the report in the Patent and Trademark Office Official Gazette.

"(f) STAFF.—The Board shall employ a staff and procure support services for the staff adequate to enable the Board to carry out its functions, using funds available to the Commissioner under section 42 of this title. Persons employed by the Board shall receive compensation as determined by the Board, serve in accordance with terms and conditions of employment established by the Board, and be subject solely to the direction of the Board, notwithstanding any other provision of law.

"(g) COMPENSATION.—Members of the Board may accept reimbursement for expenses incurred in attending meetings of the Board and compensation not to exceed $1000 per day for each day in attendance at meetings of the Board.

"(h) ACCESS TO INFORMATION.—Members of the Board shall be provided access to records and information in the Patent and Trademark Office, except for personnel or other privileged information and information concerning patent applications required to be kept in confidence by section 122 of this title.

"(i) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to meetings of the Board, but all meetings of the Board shall be announced in the Federal Register at least 30 days in advance and all meetings shall be open to the public unless closed by the Board for good cause.".

SEC. 17515. INDEPENDENCE FROM DEPARTMENT OF COMMERCE.

Section 6 of title 35, United States Code, is amended—

(1) by striking ", under the direction of the Secretary of Commerce," each place it appears; and

(2) by striking ", subject to the approval of the Secretary of Commerce,".

SEC. 17516. TRADEMARK TRIAL AND APPEAL BOARD.

Section 17 of the Act of July 5, 1946 (commonly referred to as the "Trademark Act of 1946") (15 U.S.C. 1067) is amended to read as follows:

"SEC. 17. (a) In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Commissioner shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

"(b) The Trademark Trial and Appeal Board shall include the Commissioner, the Deputy Commissioner for Patents, the Deputy Commissioner for Trademarks, and members competent in trademark law who are appointed by the Commissioner.".

SEC. 17517. BOARD OF PATENT APPEALS AND INTERFERENCES.

Section 7 of title 35, United States Code, is amended to read as follows:

"§ 7. Board of Patent Appeals and Interferences

"(a) ESTABLISHMENT AND COMPOSITION.—There shall be in the Patent and Trademark Corporation a Board of Patent Appeals and Interferences. The Commissioner, the Deputy Commissioner for Patents, the Deputy Commissioner for Trademarks, the officer principally responsible for the examination of patents, the officer principally responsible for the examination of trademarks, and the examiners-in-chief shall constitute the Board. The examiners-in-chief shall be persons of competent legal knowledge and scientific ability.

"(b) DUTIES.—The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, review adverse decisions of examiners upon applications for patents and shall determine priority and patentability of invention in interferences declared under section 135(a) of this title. Each appeal and interference shall be heard by at least 3 members of the Board, who shall be designated by the Commissioner. Only the Board of Patent Appeals and Interferences may grant rehearings.".

SEC. 17518. SUITS BY AND AGAINST THE CORPORATION.

Chapter 1 of part I of title 35, United States Code, is amended—

(1) by redesignating sections 8 through 14 as sections 9 through 15; and

(2) by inserting after section 7 the following new section:

"§ 8. Suits by and against the Corporation

"(a) IN GENERAL.—

"(1) ACTIONS UNDER UNITED STATES LAW.—Any civil action, suit, or proceeding to which the Patent and Trademark Office is a party is deemed to arise under the laws of the United States. Exclusive jurisdiction over all civil actions by or against the Office is in the Federal courts as provided by law.

"(2) CONTRACT CLAIMS.—Any action, suit, or proceeding against the Office founded upon contract shall be subject to the limitations and exclusive remedy provided in section 1346(a)(2) and sections 1491 through 1509 of title 28, whether or not such contract claims are cognizable under the sections 507, 1346, 1402, 1491, 1496, 1497, 1501, 1503, 2071, 2072, 2411, 2501, 2512 of title 28). For purposes of the Contract Disputes Act of 1978 (41 U.S.C. 601 and following), the Commissioner shall be deemed to be the agency head with respect to contract claims arising with respect to the Office.

"(3) TORT CLAIMS.—Any action, suit, or proceeding against the Office founded upon tort shall be subject to the limitations and exclusive remedies provided in section 1346(b) and sections 2671 through 2680 of title 28, whether or not such tort claims are cognizable under section 1346(b) of title 28.

"(4) PROHIBITION ON ATTACHMENT, LIENS, ETC.—No attachment, garnishment, lien, or similar process, intermediate or final, in law or equity, may be issued against property of the Office.

"(5) SUBSTITUTION OF OFFICE AS PARTY.—The Office shall be substituted as defendant in any civil action, suit, or proceeding against an officer or employee of the Office, if the Office determines that the employee was acting within the scope of the officer or employee's employment with the Office. If the Office refuses to certify scope of employment, the officer or employee may at any time before trial petition the court to find and certify that the officer or employee was acting within the scope of the officer or employee's employment. Upon certification by the court, the Office shall be substituted as the party defendant. A copy of the petition shall be served upon the Office.

"(b) RELATIONSHIP WITH JUSTICE DEPARTMENT.—

"(1) EXERCISE BY OFFICE OF ATTORNEY GENERAL'S AUTHORITIES.—Except as provided in this section, in relation to all judicial proceedings in which the Office or an officer or employee thereof is a party or in which the officer or employee thereof is interested and which arise from or relate to officers or employees thereof acting within the scope of their employment, torts, contracts, property, registration of patent and trademark practitioners, patents or trademarks, or fees, the officer or employee thereof may exercise, without prior authorization from the Attorney General, the authorities and duties that otherwise would be exercised by the Attorney General on behalf of the officer or employee thereof under title 28, and other laws. In all other judicial or administrative proceedings in which the Office or an officer or employee of the Office is a party or is interested, the Office may exercise these authorities and duties only after obtaining authorization from the Attorney General.

"(2) APPEARANCES BY ATTORNEY GENERAL.—The Attorney General may file an appearance on behalf of the Office or an employee of the Office, without the consent of the Office, in any suit in which the Office is a party and represent the Office with exclusive authority in the conduct, settlement, or compromise of that suit.

"(3) CONSULTATIONS WITH AND ASSISTANCE BY ATTORNEY GENERAL.—The Office may consult with the Attorney General concerning any legal matter, and the Attorney General shall provide advice and assistance to the Office, including representing the Office in litigation, if requested by the Office.

"(4) REPRESENTATION BEFORE SUPREME COURT.—The Attorney General shall represent the Office in all cases before the United States Supreme Court.

"(5) QUALIFICATIONS OF ATTORNEYS.—An attorney admitted to practice to the bar of the highest court of at least one State in the United States or the District of Columbia and appointed by the Office may represent the Office in any legal proceeding in which the Office or an officer or employee of the Office is a party or interested, regardless of whether the attorney is a resident of the jurisdiction in which the proceeding is held and notwithstanding any other prerequisites of qualification or appearance required by the court or administrative body.".

SEC. 17519. ANNUAL REPORT OF COMMISSIONER.

Section 15 of title 35, United States Code, as redesignated by section 3518 of this Act, is amended to read as follows:

"§ 15. Annual report to Congress

"The Commissioner shall report to the Congress, not later than 90 days after the end of each fiscal year, the moneys received and expended by the Office, the purposes for which the moneys were spent, the quality and quantity of the work of the Office, and other information relating to the Office.''.

SEC. 17520. SUSPENSION OR EXCLUSION FROM PRACTICE.

Section 32 of title 35, United States Code, is amended by inserting before the last sentence the following: ''The Commissioner shall have the discretion to designate any officer or employee of the Patent and Trademark Office to conduct the hearing required by this section.''.

SEC. 17521. FUNDING.

Section 42 of title 35, United States Code, is amended to read as follows:

''§ 42. Patent and Trademark Office funding

''(a) FEES PAYABLE TO THE OFFICE.—All fees for services performed by or materials furnished by the Patent and Trademark Office shall be payable to the Office.

''(b) USE OF MONEYS.—Moneys of the Patent and Trademark Office not otherwise used to carry out the functions of the Office shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed by the United States, or in obligations or other instruments which are lawful investments for fiduciary, trust, or public funds. Fees available to the Commissioner under this title shall be used exclusively for the processing of patent applications and for other services and materials relating to patents. Fees available to the Commissioner under section 31 of the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946') (15 U.S.C. 1113) shall be used exclusively for the processing of trademark registrations and for other services and materials relating to trademarks.

''(c) BORROWING AUTHORITY.—The Patent and Trademark Office is authorized to issue from time to time for purchase by the Secretary of the Treasury its debentures, bonds, notes, and other evidences of indebtedness (hereafter in this subsection referred to as 'obligations') in an amount not exceeding $2,000,000 outstanding at any one time, to assist in financing its activities. Such obligations shall be redeemable at the option of the Office before maturity in the manner stipulated in such obligations and shall have such maturity as is determined by the Office with the approval of the Secretary of the Treasury. Each such obligation issued to the Treasury shall bear interest at a rate not less than the current yield on outstanding marketable obligations of the United States of comparable maturity during the month preceding the issuance of the obligation as determined by the Secretary of the Treasury. The Secretary of the Treasury shall purchase any obligations of the Office issued under this subsection and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter are extended to include such purpose. Payment under this subsection of the purchase price of such obligations of the Patent and Trademark Office shall be treated as public debt transactions of the United States.''.

SEC. 17522. AUDITS.

Chapter 4 of part I title 35, United States Code, is amended by adding at the end the following new section:

''§ 43. Audits

''(a) IN GENERAL.—Financial statements of the Patent and Trademark Office shall be prepared on an annual basis in accordance with generally accepted accounting principles. Such statements shall be audited by an independent certified public accountant chosen by the Secretary. The audit shall be conducted in accordance with standards that are consistent with generally accepted Government auditing standards and other standards established by the Comptroller General, and with the generally accepted auditing standards of the private sector, to the extent feasible.

''(b) REVIEW BY COMPTROLLER GENERAL.—The Comptroller General may review any audit of the financial statement of the Patent and Trademark Office that is conducted under subsection (a). The Comptroller General shall report to the Congress and the Office the results of any such review and shall include in such report appropriate recommendations.

''(c) AUDIT BY COMPTROLLER GENERAL.—The Comptroller General may audit the financial statements of the Office and such audit shall be in lieu of the audit required by subsection (a). The Office shall reimburse the Comptroller General for the cost of any audit conducted under this subsection.

''(d) ACCESS TO OFFICE RECORDS.—All books, financial records, report files, memoranda, and other property that the Comptroller General deems necessary for the performance of any audit shall be made available to the Comptroller General.

"(e) APPLICABILITY IN LIEU OF TITLE 31 PROVISIONS.—This section applies to the Office in lieu of the provisions of section 9105 of title 31.".

SEC. 17523. TRANSFER.

(a) TRANSFER OF FUNCTIONS.—Except as otherwise provided in this subtitle, there are transferred to, and vested in, the Patent and Trademark Office all functions, powers, and duties vested by law in the Secretary of Commerce or the Department of Commerce or in the officers or components in the Department of Commerce with respect to the authority to grant patents and register trademarks, and in the Patent and Trademark Office, as in effect on the day before the effective date of this subtitle, and in the officers and components of such Office.

(b) TRANSFER OF FUNDS AND PROPERTY.—The Secretary of Commerce shall transfer to the Patent and Trademark Office, on the effective date of this subtitle, so much of the assets, liabilities, contracts, property, records, and unexpended and unobligated balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Department of Commerce, including funds set aside for accounts receivable which are related to functions, powers, and duties which are vested in the Patent and Trademark Office by this subtitle.

(c) TRANSFER OF SURCHARGE FUND.—On the effective date of this subtitle, there are transferred to the Patent and Trademark Office those residual and unappropriated balances remaining as of the effective date within the Patent and Trademark Office Surcharge Fund established by section 10101(b) of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note).

CHAPTER 2—EFFECTIVE DATE; TECHNICAL AMENDMENTS

SEC. 17531. EFFECTIVE DATE.

This subtitle shall take effect on the date that is 6 months after the date of the enactment of this Act.

SEC. 17532. TECHNICAL AND CONFORMING AMENDMENTS.

(a) AMENDMENTS TO TITLE 35.—

(1) The table of contents for part I of title 35, United States Code, is amended by amending the item relating to chapter 1 to read as follows:

"1. Establishment, Officers and Employees, Functions .... 1".

(2) The table of sections for chapter 1 of title 35, United States Code, is amended to read as follows:

"CHAPTER 1—ESTABLISHMENT, OFFICERS AND EMPLOYEES, FUNCTIONS

"Sec.
"1. Establishment.
"2. Powers and duties.
"3. Officers and employees.
"4. Restrictions on officers and employees as to interest in patents.
"5. Patent and Trademark Office Management Advisory Board.
"6. Duties of Commissioner.
"7. Board of Patent Appeals and Interferences.
"8. Suits by and against the Corporation.
"9. Library.
"10. Classification of patents.
"11. Certified copies of records.
"12. Publications.
"13. Exchange of copies of patents with foreign countries.
"14. Copies of patents for public libraries.
"15. Annual report to Congress.".

(3) The table of contents for chapter 4 of part I of title 35, United States Code, is amended by adding at the end the following new item:

"43. Audits.".

(b) OTHER PROVISIONS OF LAW.—

(1) Section 9101(3) of title 31, United States Code, is amended by adding at the end the following:

"(O) the Patent and Trademark Office.".

(2) Section 602(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 474) is amended—

(A) in paragraph (20) by striking "or" after the semicolon;

(B) in paragraph (21) by striking the period and inserting "; or"; and

(C) by adding at the end the following:

"(22) the Patent and Trademark Office.".

(3) Section 500(e) of title 5, United States Code (5 U.S.C. 500(e)) is amended by striking "Patent Office" and inserting "Patent and Trademark Office".

(4) Section 5102(c)(23) of title 5, United States Code, is amended by striking ", Department of Commerce".

(5) Section 5316 of title 5, United States Code (5 U.S.C. 5316) is amended by striking "Commissioner of Patents, Department of Commerce.", "Deputy Commissioner of Patents and Trademarks.", "Assistant Commissioner for Patents.", and "Assistant Commissioner for Trademarks.".

(6) Section 12 of the Act of February 14, 1903 (15 U.S.C. 1511) is amended by striking "(d) Patent and Trademark Office;" and redesignating subsections (a) through (g) as paragraphs (1) through (6), respectively.

(7) The Act of April 12, 1892 (27 Stat. 395; 20 U.S.C. 91) is amended by striking "Patent Office" and inserting "Patent and Trademark Office".

(8) Sections 505(m) and 512(o) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(m) and 360b(o)) are each amended by striking "of the Department of Commerce".

(9) Section 105(e) of the Federal Alcohol Administration Act (27 U.S.C. 205(e)) is amended by striking "Patent Office" and inserting "Patent and Trademark Office".

(10) Section 1744 of title 28, United States Code is amended—

(A) by striking "Patent Office" each place it appears and inserting "Patent and Trademark Office"; and

(B) by striking "Commissioner of Patents" and inserting "Commissioner of Patents and Trademarks".

(11) Section 1745 of title 28, United States Code, is amended by striking "United States Patent Office" and inserting "Patent and Trademark Office".

(12) Section 1928 of title 28, United States Code, is amended by striking "Patent Office" and inserting "Patent and Trademark Office".

(13) Section 160 of the Atomic Energy Act of 1954 (42 U.S.C. 2190) is amended—

(A) by striking "Patent Office" and inserting "Patent and Trademark Office"; and

(B) by striking "Commissioner of Patents" and inserting "Commissioner of Patents and Trademarks".

(14) Section 305(c) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(c)) is amended by striking "Commissioner of Patents" and inserting "Commissioner of Patents and Trademarks".

(15) Section 12(a) of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5510(a)) is amended by striking "Commissioner of the Patent Office" and inserting "Commissioner of Patents and Trademarks".

(16) Section 1111 of title 44, United States Code, is amended by striking "Commissioner of Patents" and inserting "Commissioner of Patents and Trademarks".

(17) Sections 1114 and 1123 of title 44, United States Code, are each amended by striking "Commissioner of Patents".

(18) Section 1123 of title 44, United States Code, is amended by striking "the Patent Office,".

(19) Sections 1337 and 1338 of title 44, United States Code, and the items relating to those sections in the table of contents for chapter 13 of such title, are repealed.

(20) Section 10(i) of the Trading With the Enemy Act (50 U.S.C. App. 10(i)) is amended by striking "Commissioner of Patents" and inserting "Commissioner of Patents and Trademarks".

(21) Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting "the Patent and Trademark Office,", after "the Panama Canal Commission,".

(22) Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended by inserting after the item relating to the United States Enrichment Corporation the following new item:

"Patent and Trademark Office;".

(23) Section 10101(b)(2)(B) of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note) is amended by striking ", to the extent provided in appropriation Acts," and inserting "without appropriation".

SUBTITLE E—MISCELLANEOUS PROVISIONS

SEC. 17601. REFERENCES.

Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to an office from which a function is transferred by this title—

(1) to the Secretary of Commerce or an officer of the Department of Commerce, is deemed to refer to the head of the department or office to which such function is transferred; or

(2) to the Department of Commerce or an agency in the Department of Commerce is deemed to refer to the department or office to which such function is transferred.

SEC. 17602. EXERCISE OF AUTHORITIES.

Except as otherwise provided by law, a Federal official to whom a function is transferred by this title may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.

SEC. 17603. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Secretary of Commerce, any officer or employee of any office transferred by this title, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this title, and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date),

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law.

(b) PROCEEDINGS.—This title shall not affect any proceedings or any application for any benefits, service, license, permit, certificate, or financial assistance pending on the date of the enactment of this title before an office transferred by this title, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

(c) SUITS.—This title shall not affect suits commenced before the date of the enactment of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Commerce or the Secretary of Commerce, or by or against any individual in the official capacity of such individual as an officer or employee of an office transferred by this title, shall abate by reason of the enactment of this title.

(e) CONTINUANCE OF SUITS.—If any officer of the Department of Commerce or the Commerce Programs Resolution Agency in the official capacity of such officer is party to a suit with respect to a function of the officer, and under this title such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

SEC. 17604. TRANSFER OF ASSETS.

Except as otherwise provided in this title, so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with a function transferred to an official or agency by this title shall be available to the official or the head of that agency, respectively, at such time or times as the Director of the Office of Management and Budget directs for use in connection with the functions transferred.

SEC. 17605. DELEGATION AND ASSIGNMENT.

Except as otherwise expressly prohibited by law or otherwise provided in this title, an official to whom functions are transferred under this title (including the head of any office to which functions are transferred under this title) may delegate any of the functions so transferred to such officers and employees of the office of the official as the official may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this section or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

SEC. 17606. AUTHORITY OF ADMINISTRATOR WITH RESPECT TO FUNCTIONS TRANSFERRED.

(a) DETERMINATIONS.—If necessary, the Administrator shall make any determination of the functions that are transferred under this title.

(b) INCIDENTAL TRANSFERS.—The Administrator, at such time or times as the Administrator shall provide, may make such determinations as may be necessary with regard to the functions transferred by this title, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this title. The Administrator shall provide for the termination of the affairs of all entities terminated by this title and for such further measures and dispositions as may be necessary to effectuate the purposes of this title.

SEC. 17607. PROPOSED CHANGES IN LAW.

Not later than one year after the date of the enactment of this title, the Director of the Office of Management and Budget shall submit to the Congress a description of any changes in Federal law necessary to reflect abolishments, transfers, terminations, and disposals under this title.

SEC. 17608. CERTAIN VESTING OF FUNCTIONS CONSIDERED TRANSFERS.

For purposes of this title, the vesting of a function in a department or office pursuant to reestablishment of an office shall be considered to be the transfer of the function.

SEC. 17609. DEFINITIONS.

For purposes of this title, the following definitions apply:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Commerce Programs Resolution Agency.

(2) AGENCY.—The term "Agency" means the Commerce Programs Resolution Agency.

(3) FUNCTION.—The term "function" includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(4) OFFICE.—The term "office" includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

(5) WIND-UP PERIOD.—The term "wind-up period" means the period beginning on the effective date specified in section 17109(a) and ending on the termination date specified in section 17106(d).

SEC. 17610. LIMITATION ON ANNUAL EXPENDITURES FOR CONTINUED FUNCTIONS.

(a) IN GENERAL.—The amount expended by the United States each fiscal year for an agency, or for performance of a transferred function which immediately before the effective date specified in section 17109(a) was performed by an agency, officer, or employee of the Department of Commerce, may not exceed 75 percent of the total amount expended by the United States for that agency or for performance of that function during fiscal year 1994.

(b) EXEMPTIONS.—Subsection (a) shall not apply to the performance of a function which immediately before the effective date specified in section 17109(a) was performed by the Bureau of the Census or the Patent and Trademark Office.

SEC. 17611. USER FEES.

Within 6 months after the date of the enactment of this Act, the head of each agency that performs a function vested in the agency by this title shall report to Congress its recommendations for implementing user fees to offset operating costs for the provision of services in the performance of that function.

SEC. 17612. UNOBLIGATED BALANCES RETURNED TO TREASURY.

Any unobligated balances appropriated to carry out any program referred to in this Act shall be transferred to the general fund of the Treasury.

SEC. 17613. ANNUAL GAO REPORT.

(a) REPORT.—Not later than 1 year after the effective date specified in section 17109(a), and not later than the end of each 1-year period thereafter, the Comptroller General of the United States shall submit to the Congress a report describing the costs, if any, during the 1-year period preceding the submission of the report, that were incurred by United States exporters as a result of the transfer of the functions of the Bureau of Export Administration of the Department of Commerce under this title, or as a result of the limitation on expenditures required by section 17493. Each such report shall cover, but not be limited to, costs incurred by exporters as a result of—

(1) delays in the processing of export license applications;

(2) a reduction in outreach activities of the Government that educate exporters on complying with exporting requirements under United States law;

(3) delays in the processing of commodity classification requests by exporters regarding the applicability of export controls to specific products and technical data; and

(4) delays in the processing of requests by exporters for advisory opinions by the Government regarding whether specific transactions are likely to be approved or denied by the Government.

(b) TERMINATION OF PROVISIONS.—If, in any report submitted under subsection (a), the Comptroller General determines that costs described in such subsection were incurred by United States exporters, then sections 17610(a) and 17493(a) shall cease to apply to the functions of the Bureau of Export Administration of the Department of Commerce transferred under this title.

TITLE XVIII—WELFARE REFORM

[Text to be inserted]

TITLE XIX—CONTRACT TAX PROVISIONS

[Text to be inserted]

TITLE XX—BUDGET PROCESS

[Text to be inserted]

TITLES XIII AND XIV—COMMITTEE ON WAYS AND MEANS REVENUE RECONCILIATION PROVISIONS

COMMITTEE ON WAYS AND MEANS,
HOUSE OF REPRESENTATIVES,
Washington, DC, September 22, 1995.

Hon. JOHN R. KASICH,
Chairman, Committee on the Budget,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: On September 19, 1995, the Committee on Ways and Means, pursuant to House Concurrent Resolution 67, the Concurrent Resolution on the Budget for Fiscal 1996, ordered favorably reported, as amended, its budget reconciliation recommendations on revenue items, to the Committee on Budget by a recorded vote of 21 to 15. Accordingly, I am now transmitting these recommendations to you.

Enclosed are the legislative language, explanatory report language, estimates of the Congressional Budget Office and Joint Committee on Taxation and additional views. Under separate covers, I am transmitting the committee's recommendations on trade items, and trade adjustment assistance.

Please feel free to contact me or Phil Moseley if you have any questions. With best personal regards,

Sincerely,

BILL ARCHER, *Chairman.*

Enclosures.

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TITLES XIII AND XIV—COMMITTEE ON WAYS AND MEANS REVENUE RECONCILIATION PROVISIONS

I. INTRODUCTION

A. PURPOSE AND SUMMARY/BACKGROUND AND NEED FOR LEGISLATION

The revenue reconciliation recommendations transmitted to the House Committee on the Budget by the House Committee on Ways and Means are contained in two titles. Title XIII, the "Revenue Reconciliation Act," includes extensions of certain expiring tax provisions and various tax reform provisions and title XIV, the "Tax Simplification Act," includes various tax simplification provisions. These provisions are summarized briefly below and described in more detail in part II.

Title XIII—Revenue Reconciliation Act

Subtitle A—Extension of Certain Expiring Tax Provisions

The bill extends the following five expiring tax provisions through December 31, 1997: First, the work opportunity tax credit (formerly the targeted jobs tax credit) with modifications; second, the exclusion from income of the value of employer-provided educational assistance with modifications; third, the research and experimentation tax credit with modifications; fourth, the special rule for contributions of qualified appreciated stock to private foundations; and fifth, the orphan drug tax credit. In addition, the bill permanently extends the exclusion from FUTA for certain alien agricultural workers. The bill also extends the present-law excise tax exemption for commercial aviation fuels for 2 years, through September 30, 1997, and extends the present-law Airport and Airway Trust Fund excise taxes (and transfers of these revenues to the Trust Fund) for 9 months, through September 30, 1996.

Subtitle B—Medical Savings Accounts

The bill permits individuals who are covered only by a catastrophic health insurance plan to maintain a medical savings account [MSA]. In general, contributions to an MSA would be deductible (up to $2,500 for an individual and $5,000 for a family) from an individual's income in the case of an individual contribution, or excludable from an employee's income in the case of an employer contribution. Withdrawals from the account would not be taxed if used for medical expenses for the individual or his or her family.

Subtitle C—Pickle-Johnson Taxpayer Bill of Rights 2

The bill contains a number of provisions that strengthen the rights of taxpayers in their dealings with the Internal Revenue Service.

Subtitle D—Additional Technical Corrections

The bill makes five technical and conforming changes with respect to previously enacted legislation.

Subtitle E—Tax Information Sharing: Extension of Disclosure of Return Information for Administration of Certain Veterans Programs

The bill permanently extends the authority of the Internal Revenue Service to disclose tax information to the Department of Veterans Affairs [DVA] to assist DVA in determining eligibility for and establishing the correct benefits amounts under certain DVA programs.

Subtitle F—Revenue Increases: Corporate and Other Tax Reforms

The bill provides various corporate and other tax reforms that eliminate or modify many special tax benefits available to businesses and individuals under present law. In general, these reforms: modify the tax treatment of certain corporate stock redemptions; require corporate tax shelter reporting; deny deductions for interest on loans with respect to company-owned life insurance; phase out preferential tax deferral for certain large farm corporations required to use accrual accounting; phase in repeal of section 936; reform the income forecast method of accounting; permit withdrawal of excess corporate pension assets; modify the exclusion from income of damage awards; require tax reporting for payments to attorneys; modify and strengthen certain expatriation tax provisions; phase out tax credits for wind energy and "closed loop" biomass; modify tax benefits for ethanol and methanol from renewable sources; remove the business exclusion for energy subsidies provided by public utilities; modify the basis adjustment rules under section 1033; modify the exception to the related-party rule of section 1033 for individuals to only provide an exception for de minimis amounts; disallow a rollover under section 1034 to the extent of previously claimed depreciation; provide that rollover of gain on sale of a principal residence by a noncitizen cannot be elected unless the replacement property purchased is located within the United States; tax the gambling income of Indian tribes and repeal a targeted exemption from UBIT for gambling in one State; repeal the exemption for withholding on gambling winnings from bingo and keno where the proceeds exceed $5,000; sunset the low-income housing tax credit after December 31, 1997; repeal the tax credit for contributions to community development corporations; repeal the advance refunds of the diesel fuel tax for diesel cars and light trucks; modify the treatment of substitute returns for purposes of the penalty for failure to pay taxes; remove the exclusion from income for taxpayers who rent their home for fewer than 15 days; allow conversion of scholarship funding corporations to taxable corporations; apply a look-through rule for purposes of characterizing certain subpart F insurance income as unrelated business taxable income; and provide for intermediate sanctions for certain tax-exempt organizations.

Subtitle G—Reform of the Earned Income Tax Credit

With respect to the earned income tax credit, the bill modifies the definition of income used to calculate the phaseout of the credit, eliminates the credit for individuals without qualifying children, increases the rate at which the credit is phased out, and denies the credit to individuals without proper Social Security numbers. These changes are designed to insure that the credit is targeted to the neediest individuals.

Subtitle H—Increase in Public Debt Limit

The bill increases the statutory limit on the public debt to $5.5 trillion to facilitate the smooth functioning of the Federal Government and to prevent any disruption of financial markets.

Subtitle I—Repeal of Reachback Provisions of Coal Industry Health Benefit System

The bill returns responsibility for funding the health benefits of retired coal miners covered by the Combined Fund and the 1992 United Mine Workers of America Benefit Fund to the coal operators who were signatories to the 1988 National Bituminous Coal Wage Agreement by exempting reachback companies and operators who made withdrawal liability payments under the terms of the

1988 agreement from the provisions of the Coal Industry Retiree Health Act of 1992.

Title XIV—Tax Simplification Act

Title XIV contains simplification provisions relating to Federal income taxes, estate, gift and trust taxes, and excise taxes. These provisions are intended to simplify administration of the Internal Revenue Code.

B. LEGISLATIVE HISTORY

Committee revenue reconciliation provisions

Titles XIII and XIV are the revenue reconciliation provisions as approved by the Committee on Ways and Means on September 19, 1995, by a rollcall vote of 21 yeas and 15 nays. The committee marked up the reconciliation provisions on September 18–19, 1995.

Title XIII contains revenue provisions relating to: First, extension of certain expiring tax provisions; second, medical savings accounts; third, Taxpayer Bill of Rights 2; fourth, additional technical corrections; fifth, extension of disclosure of tax return information to the Department of Veterans Affairs; sixth, corporate and other tax reform revenue increases;[1] seventh, earned income tax credit reforms; eighth, an increase in the public debt limit; and ninth, repeal of the reachback provisions of the coal industry retiree health benefit program. The Oversight Subcommittee met on September 12, 1995, and approved a series of recommendations with respect to the Taxpayer Bill of Rights 2 provisions, which are included in title XIII with modifications.[2]

Title XIV contains various tax simplification provisions, most of which were previously passed by the House in 1994 (103d Cong.) and in 1992 (102d Cong.).

Earlier this year, the Committee on Ways and Means reported tax reduction and tax technical corrections provisions in H.R. 1215 (H. Rept. 104–84, March 21, 1995), and the House passed H.R. 1215 on April 5, 1995. The committee intends to recommend that the revenue provisions of H.R. 1215, as modified to meet the revenue reduction target of −$245 billion over the fiscal year period 1996–2002 in the fiscal year 1996 Budget Resolution (H. Con. Res. 67), be included in the budget reconciliation legislation to be considered by the Rules Committee and the House.

Legislative hearings

Subcommittee hearings

Subcommittee hearings relating to the revenue provisions in titles XIII and XIV include the following:

March 24, 1995—Oversight Subcommittee hearing on Taxpayer Bill of Rights 2 proposals;

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[1] Included in the revenue increases are provisions from H.R. 1812, Expatriation Tax Act of 1995, as previously reported by the Committee on Ways and Means (H. Rept. 104–145, June 16, 1995).

[2] The Oversight Subcommittee recommendations were introduced in H.R. 2337 on September 14, 1995, by Mrs. Johnson of Connecticut and Mr. Matsui.

March 27, 1995—Oversight Subcommittee hearing on tax treatment of U.S. citizens who relinquish their citizenship and long-term resident aliens who relinquish their U.S. residency;
May 9, 1995—Oversight Subcommittee hearing on various expiring tax provisions;
May 10, 1995—Oversight Subcommittee hearing on the research tax credit and allocation of research expenses;
June 15, 1995—Oversight Subcommittee and Human Resources Subcommittee joint hearing on the earned income tax credit;
June 22, 1995—Oversight Subcommittee hearing on Coal Industry Retiree Health Benefit Act of 1992;
June 27, 1995—Health Subcommittee hearing on H.R. 1818, Family Medical Savings and Investment Act; and
July 18, 1995—Oversight Subcommittee hearing on the Internal Revenue Service's Taxpayer Compliance Measurement Program.

Full committee hearings

Certain of the tax simplification provisions (contained in title XIV) were the subject of hearings on various miscellaneous tax reforms on July 11–12, 1995.

II. EXPLANATION OF PROVISIONS

TITLE XIII. REVENUE RECONCILIATION ACT

SUBTITLE A. EXTENSION EXPIRING TAX PROVISIONS

1. Work opportunity tax credit (sec. 13101 of the bill and sec. 51 of the code)

Prior Law

General rules

Prior to January 1, 1995, the targeted jobs tax credit was available on an elective basis for employers hiring individuals from one or more of nine targeted groups. The credit generally was equal to 40 percent of qualified first-year wages. Qualified first-year wages consisted of wages attributable to service rendered by a member of a targeted group during the 1-year period beginning with the day the individual began work for the employer. For a vocational rehabilitation referral, however, the period began the day the individual began work for the employer on or after the beginning of the individual's vocational rehabilitation plan.

No more than $6,000 of wages during the first year of employment were permitted to be taken into account with respect to any individual. Thus, the maximum credit per individual was $2,400.

With respect to economically disadvantaged summer youth employees, the credit was equal to 40 percent of up to $3,000 of qualified first-year wages, for a maximum credit of $1,200.

The deduction for wages was reduced by the amount of the credit.

Certification of members of targeted groups

In general, an individual was not treated as a member of a targeted group unless certification that the individual was a member of such a group was received or requested in writing by the employer from the designated local agency on or before the day on which the individual began work for the employer. In the case of a certification of an economically disadvantaged youth participating in a cooperative education program, this requirement was satisfied if the certification was requested or received from the participating school on or before the day on which the individual began work for the employer. The "designated local agency" was the State employment security agency.

If a certification was incorrect because it was based on false information provided as to the employee's membership in a targeted group, the certification was revoked. Wages paid after the revocation notice was received by the employer were not treated as qualified wages.

The U.S. Employment Service, in consultation with the Internal Revenue Service, was directed to take whatever steps necessary to keep employers informed of the availability of the credit.

Targeted groups eligible for the credit

The nine groups eligible for the credit were either recipients of payments under means-tested transfer programs, economically disadvantaged (as measured by family income), or disabled individuals.

(1) Vocational rehabilitation referrals

Vocational rehabilitation referrals were those individuals who had a physical or mental disability that constituted a substantial handicap to employment and who had been referred to the employer while receiving, or after completing, vocational rehabilitation services under an individualized, written rehabilitation plan under a State plan approved under the Rehabilitation Act of 1973, or under a rehabilitation plan for veterans carried out under chapter 31 of title 38, United States Code. Certification was provided by the designated local employment agency upon assurances from the vocational rehabilitation agency that the employee had met the above conditions.

(2) Economically disadvantaged youths

Economically disadvantaged youths were individuals certified by the designated local employment agency as first, members of economically disadvantaged families and second, at least age 18 but not age 23 on the date they were hired by the employer. An individual was determined to be a member of an economically disadvantaged family if, during the 6 months immediately preceding the earlier of the month in which the determination occurred or the month in which the hiring date occurred, the individual's family income was, on an annual basis, not more than 70 percent of the Bureau of Labor Statistics' lower living standard. A determination that an individual was a member of an economically disadvantaged family was valid for 45 days from the date on which the determination was made.

Except as otherwise noted below, a determination of whether an individual was a member of an economically disadvantaged family was made on the same basis and was subject to the same 45-day limitation, where required in connection with the four other targeted groups that excluded individuals who were not economically disadvantaged.

(3) Economically disadvantaged Vietnam-era veterans

The third targeted group was Vietnam-era veterans certified by the designated local employment agency as members of economically disadvantaged families. For these purposes, a Vietnam-era veteran was an individual who had served on active duty (other than for training) in the Armed Forces for more than 180 days, or who had been discharged or released from active duty in the Armed Forces for a service-connected disability, but in either case, the active duty must have taken place after August 4, 1964, and before May 8, 1975. However, any individual who had served for a period of more than 90 days during which the individual was on active duty (other than for training) was not an eligible employee if any of this active duty occurred during the 60-day period ending on the date the individual was hired by the employer. This latter rule was intended to prevent employers who hired current members of the armed services (or those departed from service within the last 60-days) from receiving the credit.

(4) SSI recipients

The fourth targeted group was individuals receiving either Supplemental Security Income [SSI] under Title XVI of the Social Security Act or State supplements described in section 1616 of that Act or section 212 of Public Law 93–66. To be an eligible employee, the individual must have received SSI payments during at least a 1-month period ending during the 60-day period that ended on the date the individual was hired by the employer. The designated local agency was to issue the certification after a determination by the agency making the payments that these conditions had been fulfilled.

(5) General assistance recipients

General assistance recipients were individuals who received general assistance for a period of not less than 30 days if that period ended within the 60-day period ending on the date the individual was hired by the employer. General assistance programs were State and local programs that provided individuals with money payments, vouchers, or scrip based on need. These programs were referred to by a wide variety of names, including home relief, poor relief, temporary relief, and direct relief. Because of the wide variety of such programs, Congress provided that a recipient was an eligible employee only after the program had been designated by the Secretary of the Treasury as a program that provided money payments, vouchers, or scrip to needy individuals. Certification was performed by the designated local agency.

(6) Economically disadvantaged former convicts

The sixth targeted group included any individual who was certified by the designated local employment agency as first, having at some time been convicted of a felony under State or Federal law, second, being a member of an economically disadvantaged family, and third, having been hired within 5 years of the later of release from prison or date of conviction.

(7) Economically disadvantaged cooperative education students

The seventh targeted group was youths who first, actively participated in qualified cooperative education programs, second, had attained age 16 but had not attained age 20, third, had not graduated from high school or vocational school, and fourth, were members of economically disadvantaged families. The definitions of a qualified cooperative education program and a qualified school were similar to those used in the Vocational Education Act of 1963. Thus, a qualified cooperative education program meant a program of vocational education for individuals who, through written cooperative arrangements between a qualified school and one or more employers, received instruction, including required academic instruction, by alternation of study in school with a job in any occupational field, but only if these two experiences were planned and supervised by the school and the employer so that each experience contributed to the student's education and employability.

For this purpose, a qualified school was first, a specialized high school used exclusively or principally for the provision of vocational education to individuals who were available for study in preparation for entering the labor market, second, the department of a high school used exclusively or principally for providing vocational education to individuals who were available for study in preparation for entering the labor market, or third, a technical or vocational school used exclusively or principally for the provision of vocational education to individuals who had completed or left high school and who were available for study in preparation for entering the labor market. In order for a nonpublic school to be a qualified school, it must have been exempt from income tax under section 501(a) of the code.

The certification was performed by the school participating in the cooperative education program. After initial certification, an individual remained a member of the targeted group only while meeting the program participation, age, and degree status requirements of (a), (b), and (c), above.

(8) AFDC recipients

The eighth targeted group included any individual who was certified by the designated local employment agency as being eligible for Aid to Families with Dependent Children [AFDC] and as having continually received such aid during the 90 days before being hired by the employer.

(9) Economically disadvantaged summer youth employees

The ninth targeted group included youths who performed services during any 90-day period between May 1 and September 15 of a given year and who were certified by the designated local agency as first, being 16 or 17 years of age on the hiring date and second, a member of an economically disadvantaged family. A youth must not have been an employee of the employer prior to that 90-day period. With respect to any particular employer, an employee could qualify only one time for this summer youth credit. If, after the end of the 90-day period, the employer continued to employ a youth who was certified during the 90-day period as a member of another targeted group, the limit on qualified first-year wages took into account wages paid to the youth while a qualified summer youth employee.

Definition of wages

In general, wages eligible for the credit were defined by reference to the definition of wages under the Federal Unemployment Tax Act [FUTA] in section 3306(b) of the code, except that the dollar limits did not apply. Because wages paid to economically disadvantaged cooperative education students and to certain agricultural and railroad employees were not FUTA wages, special rules were provided for these wages.

Wages were taken into account for purposes of the credit only if more than one-half of the wages paid during the taxable year to an employee were for services in the employer's trade or business. The test as to whether more than one-half of an employee's wages were for services in a trade or business was applied to each separate employer without treating related employers as a single employer.

Other rules

In order to prevent taxpayers from eliminating all tax liability by reason of the credit, the amount of the credit could not exceed 90 percent of the taxpayer's income tax liability. Furthermore, the credit was allowed only after certain other nonrefundable credits had been taken. If, after applying these other credits, 90 percent of an employer's remaining tax liability for the year was less than the targeted jobs tax credit, the excess credit could be carried back 3 years and carried forward 15 years.

All employees of all corporations that were members of a controlled group of corporations were to be treated as if they were employees of the same corporation for purposes of determining the years of employment of any employee and wages for any employee up to $6,000. Generally, under the controlled group rules, the credit allowed the group was the same as if the group were a single company. A comparable rule was provided in the case of partnerships, sole proprietorships, and other trades or businesses (whether or not incorporated) that were under common control, so that all employees of such organizations generally were to be treated as if they were employed by a single person. The amount of targeted jobs tax credit allowable to each member of the controlled group was its proportionate share of the wages giving rise to the credit.

No credit was available for the hiring of certain related individuals (primarily dependents or owners of the taxpayer). The credit was also not available for wages paid to an individual who was employed by the employer at any time during which the individual was not a certified member of a targeted group.

No credit was allowed for wages paid unless the eligible individual was either first, employed by the employer for at least 90 days (14 days in the case of economically disadvantaged summer youth employees) or second, had completed at least 120 hours (20 hours for summer youth) of services performed for the employer.

Reasons for Change

While the prior-law targeted jobs tax credit was the subject of some criticism, the committee believes that a tax credit mechanism can provide an important incentive for employers to undertake the expense of providing jobs and training to economically disadvantaged individuals, many of whom are underskilled and/or undereducated. The bill creates a new program whose design will focus on individuals with poor workplace attachments, streamline administrative burdens, promote longer-term employment, and thereby reduce costs relative to the prior-law program. The committee intends that this 2-year program will provide the Congress and the Treasury and Labor Departments an opportunity to assess fully the operation and effectiveness of the new credit as a hiring incentive.

Explanation of Provision

General rules

The bill replaces the targeted jobs tax credit with the "work opportunity tax credit." The work opportunity tax credit is available on an elective basis for employers hiring individuals from one or more of five targeted groups. The credit generally is equal to 35 percent of qualified wages. Qualified wages consist of wages attributable to service rendered by a member of a targeted group during the 1-year period beginning with the day the individual begins work for the employer. For a vocational rehabilitation referral, however, the period will begin on the day the individual begins work for the employer on or after the beginning of the individual's vocational rehabilitation plan as under prior law.

Generally, no more than $6,000 of wages during the first year of employment is permitted to be taken into account with respect to any individual. Thus, the maximum credit per individual is $2,100. With respect to qualified summer youth employees, the maximum credit is 35 percent of up to $3,000 of qualified first-year wages, for a maximum credit of $1,050.

The deduction for wages is reduced by the amount of the credit.

Certification of members of targeted groups

In general, an individual is not to be treated as a member of a targeted group unless: First, on or before the day the individual begins work for the employer, the employer received in writing a certification from the designated local agency that the individual is a member of a specific targeted group, or second, on or before the day the individual is offered work with the employer, a pre-screening notice is completed with respect to that individual and within 14 days after the individual begins work for the employer, the employer submits such notice to the designated local agency as part of a written request for certification. The pre-screening notice will contain the information provided to the employer by the individual that forms the basis of the employer's belief that the individual is a member of a targeted group.

If a certification is incorrect because it is based on false information provided as to the individual's membership in a targeted group, the certification will be revoked. No credit will be allowed on wages paid after receipt by the employer of the revocation notice.

If a designated local agency rejects a certification request it will have to provide a written explanation of the basis of the rejection.

Targeted groups eligible for the credit

(1) Aid to Families With Dependent Children [AFDC]

An AFDC recipient is an individual certified as receiving assistance under a State plan approved under part A of title IV of the Social Security Act for a period of at least 9 months ending during the 9-month period (12 months in the case of certain veterans) ending on the hiring date. For these purposes, each member of the family receiving AFDC is treated as receiving such assistance. A veteran is an individual who has served on active duty (other than for training) in the Armed Forces for more than 180 days or who has been discharged or released from active duty in the Armed Forces for a service-connected disability. However, any individual who has served for a period of more than 90 days during which the individual was on active duty (other than for training) is not an eligible employee if any of this active duty occurred during the 60-day period ending on the date the individual was hired by the employer. This latter rule is intended to prevent employers who hire current members of the armed services (or those departed from service within the last 60 days) from receiving the credit.

(2) Qualified ex-felon

A qualified ex-felon is an individual certified as: First, having been convicted of a felony under any State or Federal law, second, being a member of a family that had an income during the 6 months before the earlier of the date of determination or the hiring date which on an annual basis is 70 percent or less of the Bureau of Labor Statistics lower living standard, and third, having a hiring date within 1 year of release from prison or date of conviction.

(3) High-risk youth

A high-risk youth is an individual certified as being at least age 18 but not 25 on the hiring date and as having a principal place of abode within an empowerment zone or enterprise community (as defined under subchapter U of the Internal Revenue Code). Qualified wages will not include wages paid or incurred for services performed after the individual moves outside an empowerment zone or enterprise community.

(4) Vocational rehabilitation referral

Vocational rehabilitation referrals are those individuals who have a physical or mental disability that constitutes a substantial handicap to employment and who have been referred to the employer while receiving, or after completing, vocational rehabilitation services under an individualized, written rehabilitation plan under a State plan approved under the Rehabilitation Act of 1973 or under a rehabilitation plan for veterans carried out under chapter 31 of title 38, United States Code. Certification will be provided by the designated local employment agency upon assurances from the vocational rehabilitation agency that the employee has met the above conditions.

(5) Qualified summer youth employee

Qualified summer youth employees are individuals: First, who perform services during any 90-day period between May 1 and September 15, second, who are certified by the designated local agency as being 16 or 17 years of age on the hiring date, third, who have not been an employee of that employer before, and fourth, who are certified by the designated local agency as having a principal place of abode within an empowerment zone or enterprise community (as defined under subchapter U of the Internal Revenue Code). As with high-risk youths, no credit is available on wages paid or incurred for service performed after the qualified summer youth moves outside of an empowerment zone or enterprise community. If, after the end of the 90-day period, the employer continues to employ a youth who was certified during the 90-day period as a member of another targeted group, the limit on qualified first-year wages will take into account wages paid to the youth while a qualified summer youth employee.

Definition of wages and other rules

In general, wages eligible for the credit are defined by reference to the definition of wages under the Federal Unemployment Tax Act [FUTA] in section 3306(b) of the code, except that the dollar limits do not apply.

Wages are taken into account for purposes of the credit only if more than one-half of the wages paid during the taxable year to an employee are for services in the employer's trade or business. The test as to whether more than one-half of an employee's wages are for services in a trade or business are applied to each separate employer without treating related employers as a single employer.

In order to prevent taxpayers from eliminating all tax liability by reason of the credit, the amount of the credit may not exceed 90 percent of the taxpayer's income tax liability. Furthermore, the credit is allowed only after certain other nonrefundable credits had been taken. If, after applying these other credits, 90 percent of an employer's remaining tax liability for the year is less than the targeted jobs tax credit, the excess credit can be carried back 3 years and carried forward 15 years.

All employees of all corporations that are members of a controlled group of corporations are treated as if they were employees of the same corporation for purposes of determining the years of employment of any employee and wages for any employee up to $6,000. Generally, under the controlled group rules, the credit allowed the group is the same as if the group were a single company. A comparable rule is provided in the case of partnerships, sole proprietorships, and other trades or businesses (whether or not incorporated) that are under common control, so that all employees of such organizations generally are treated as if they were employed by a single person. The amount of the credit allowable to each member of the controlled group is its proportionate share of the wages giving rise to the credit.

No credit is available for the hiring of certain related individuals (primarily dependents or owners of the taxpayer). The credit is also not available for wages paid to an individual who is employed by the employer at any time during which the individual is not a certified member of a targeted group.

Minimum employment period

No credit is allowed for wages paid unless the eligible individual is employed by the employer for at least 180 days (20 days in the case of a qualified summer youth employee) or 500 hours (120 hours in the case of a qualified summer youth employee).

Business awareness program

The Secretary of Labor shall establish a program to encourage small businesses to work with the designated local agencies to identify eligible individuals for inclusion in the credit program. The Secretary of Labor and heads of other Federal agencies also are directed to simplify credit procedures to encourage participation.

Effective Date

The credit is effective for wages paid or incurred to a qualified individual who begins work for an employer on or after January 1, 1996, and before January 1, 1998.

2. Employer-provided educational assistance (sec. 13102 of the bill and sec. 127 of the code)

Present and Prior Law

Under present law, an employee must include in income and wages, for income and employment tax purposes, the value of educational assistance provided by an employer to an employee, unless the cost of such assistance qualifies as a deductible job-related expense of the employee. Amounts expended for education qualify as deductible job-related expenses if the education first, maintains or improves skills required for the employee's current job, or second, meets the express requirements of the individual's employer that are imposed as a condition of continued employment in the employee's current job (Treas. Reg. sec. 1.162–5(a)). Such expenses (if not reimbursed by the employer) are deductible only to the extent that, when aggregated with other miscellaneous itemized deductions, they exceed 2 percent of the taxpayer's adjusted gross income. No deduction (or exclusion) is allowed for expenses incurred to qualify for a new trade or business.

Under prior law (sec. 127), an employee's gross income and wages did not include amounts paid or incurred by the employer for educational assistance provided to the employee if such amounts were paid or incurred pursuant to an educational assistance program that met certain requirements. This exclusion, which expired for taxable years beginning after December 31, 1994, was limited to $5,250 of educational assistance with respect to an individual during a calendar year.

Reasons for Change

The section 127 exclusion for employer-provided educational assistance was first established on a temporary basis by the Revenue Act of 1978 (through 1983). It subsequently was extended, again on a temporary basis, by Public Law 98–611 (through 1985), by the Tax Reform Act of 1986 (through 1987), by the Technical and Miscellaneous Revenue Act of 1988 (through 1988), by the Omnibus Budget Reconciliation Act of 1989 (through September 30, 1990), by the Omnibus Budget Reconciliation Act of 1990 (through 1991), by the Tax Extension Act of 1991 (through June 30, 1992), and by the Omnibus Budget Reconciliation Act of 1993 (through December 31, 1994). Public Law 98–611 adopted a $5,000 annual limit on the exclusion; this limit was subsequently raised to $5,250 in the Tax Reform Act of 1986. The Technical and Miscellaneous Revenue Act of 1988 made the exclusion inapplicable to graduate-level courses. The restriction on graduate-level courses was repealed by the Omnibus Budget Reconciliation Act of 1990, effective for taxable years beginning after December 31, 1990.

The committee believes that the exclusion for employer-provided educational assistance should be extended because it provides needed assistance to workers and aids U.S. competitiveness by encouraging a better-educated work force. The need to balance the Federal budget necessitates some modification to the exclusion, as well as limiting it (and as other expiring tax provisions) to a temporary extension. The committee believes that the exclusion for employer-provided education should be targeted to those most in need of educational assistance—low- and middle-income employees who seek to obtain education which improves their skills and qualifies them for better jobs. Accordingly, the committee believes it appropriate to reinstate the restriction on graduate-level education. However, due to the past practice of extending the exclusion after it has expired, the committee is concerned that some taxpayers may have assumed that the exclusion would be available for graduate education during 1995. Thus, the restriction on graduate-level education is effective beginning in 1996.

Explanation of Provision

The exclusion for employer-provided educational assistance is restored retroactively to the date of expiration and is extended so that it expires for taxable years beginning after December 31, 1997. In years beginning after December 31, 1995, the exclusion does not apply with respect to graduate-level courses.

Effective Date

The provision is effective with respect to taxable years beginning after December 31, 1994, and the restriction of the exclusion to undergraduate education is effective for taxable years beginning after December 31, 1995.

3. Research and development tax credit (sec. 13103 of the bill and sec. 41 of the code)

Prior Law

General rule

Prior to July 1, 1995, section 41 of the Internal Revenue Code provided for a research tax credit equal to 20 percent of the amount by which a taxpayer's qualified research expenditures for a taxable year exceeded its base amount for that year. The research tax credit expired and does not apply to amounts paid or incurred after June 30, 1995.

A 20-percent research tax credit also applied to the *excess* of first, 100 percent of corporate cash expenditures (including grants or contributions) paid for basic research conducted by universities (and certain nonprofit scientific research organizations) *over* second, the sum of (a) the greater of two minimum basic research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation. This separate credit computation is commonly referred to as the "university basic research credit" (see sec. 41(e)).

Computation of allowable credit

Except for certain university basic research payments made by corporations, the research tax credit applies only to the extent that the taxpayer's qualified research expenditures for the current taxable year exceed its base amount. The base amount for the current year generally is computed by multiplying the taxpayer's fixed-base percentage by the average amount of the taxpayer's gross receipts for the 4 preceding years. If a taxpayer both incurred qualified research expenditures and had gross receipts during each of at least 3 years from 1984 through 1988, then its fixed-base percentage is the ratio that its total qualified research expenditures for the 1984–1988 period bears to its total gross receipts for that period (subject to a maximum ratio of .16). All other taxpayers (so-called start-up firms) are assigned a fixed-base percentage of 3 percent.[3]

In computing the credit, a taxpayer's base amount may not be less than 50 percent of its current-year qualified research expenditures.

To prevent artificial increases in research expenditures by shifting expenditures among commonly controlled or otherwise related entities, research expenditures and gross receipts of the taxpayer are aggregated with research expenditures and gross receipts of certain related persons for purposes of computing any allowable

[3] The Omnibus Budget Reconciliation Act of 1993 included a special rule designed to gradually recompute a start-up firm's fixed-base percentage based on its actual research experience. Under this special rule, a start-up firm (i.e., any taxpayer that did not have gross receipts in at least 3 years during the 1984–1988 period) will be assigned a fixed-base percentage of 3 percent for each of its first 5 taxable years after 1993 in which it incurs qualified research expenditures. In the event that the research credit is extended beyond the scheduled June 30, 1995 expiration date, a start-up firm's fixed-base percentage for its 6th through 10th taxable years after 1993 in which it incurs qualified research expenditures will be a phased-in ratio based on its actual research experience. For all subsequent taxable years, the taxpayer's fixed-base percentage will be its actual ratio of qualified research expenditures to gross receipts for any 5 years selected by the taxpayer from its 5th through 10th taxable years after 1993 (sec. 41(c)(3)(B)).

credit (sec. 41(f)(1)). Special rules apply for computing the credit when a major portion of a business changes hands, under which qualified research expenditures and gross receipts for periods prior to the change or ownership of a trade or business are treated as transferred with the trade or business that gave rise to those expenditures and receipts for purposes of recomputing a taxpayer's fixed-base percentage (sec. 41(f)(3)).

Eligible expenditures

Qualified research expenditures eligible for the research tax credit consist of: First, in-house expenses of the taxpayer for wages and supplies attributable to qualified research; second, certain time-sharing costs for computer use in qualified research; and third, 65 percent of amounts paid by the taxpayer for qualified research conducted on the taxpayer's behalf (so-called contract research expenses).

To be eligible for the credit, the research must not only satisfy the requirements of present-law section 174 but must be undertaken for the purpose of discovering information that is technological in nature, the application of which is intended to be useful in the development of a new or improved business component of the taxpayer, and must pertain to functional aspects, performance, reliability, or quality of a business component. Research does not qualify for the credit if substantially all of the activities relate to style, taste, cosmetic, or seasonal design factors (sec. 41(d)(3)). In addition, research does not qualify for the credit if conducted after the beginning of commercial production of the business component, if related to the adaptation of an existing business component to a particular customer's requirements, if related to the duplication of an existing business component from a physical examination of the component itself or certain other information, or if related to certain efficiency surveys, market research or development, or routine quality control (sec. 41(d)(4)).

Expenditures attributable to research that is conducted outside the United States do not enter into the credit computation. In addition, the credit is not available for research in the social sciences, arts, or humanities, nor is it available for research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

Relation to deduction

Deductions for expenditures allowed to a taxpayer under section 174 (or any other section) are reduced by an amount equal to 100 percent of the taxpayer's research tax credit determined for the taxable year. Taxpayers may alternatively elect to claim a reduced research tax credit amount under section 41 in lieu of reducing deductions otherwise allowed (sec. 280C(c)(3)).

Reasons for Change

Businesses may not find it profitable to invest in some research activities because of the difficulty in capturing the full benefits from the research. Costly technological advances made by one firm are often cheaply copied by its competitors. A research tax credit can help to promote investment in research, so that research activities undertaken approach the optimal level for the overall economy. Therefore, the committee believes that it is appropriate to reinstate the research tax credit and to make certain modifications to the method for computing the credit.

Explanation of Provision

The research tax credit (including the university basic research credit) is extended for the period July 1, 1995, through December 31, 1997.

The bill also expands the definition of "start-up firms" under section 41(c)(3)(B)(i) to include any firm if the first taxable year in which such firm had both gross receipts and qualified research expenses began after 1983.[4]

In addition, the bill allows taxpayers to elect an alternative incremental research credit regime. If a taxpayer elects to be subject to this alternative regime, the taxpayer is assigned a three-tiered fixed-base percentage (that is lower than the fixed-base percentage otherwise applicable under present law) and the credit rate likewise is reduced. Under the alternative credit regime, a credit rate of 1.65 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1 percent (i.e., the base amount equals 1 percent of the taxpayer's average gross receipts for the 4 preceding years) but do not exceed a base amount computed by using a fixed-base percentage of 1.5 percent. A credit rate of 2.2 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1.5 percent but do not exceed a base amount computed by using a fixed-base percentage of 2 percent. A credit rate of 2.75 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 2 percent. An election to be subject to this alternative incremental credit regime may be made only for a taxpayer's first taxable year beginning after June 30, 1995, and such an election applies to that taxable year and all subsequent years unless revoked with the consent of the Secretary of the Treasury.

The bill also provides for a special rule for payments made to a qualified research consortium. Under this special rule, 75 percent of amounts paid to a qualified research consortium for qualified research are treated as qualified research expenses eligible for the research credit (rather than 65 percent under the present-law section 41(b)(3) rule governing contract research expenses). For this purpose, a qualified research consortium is defined as a nonprofit scientific research organization that is described in section 501(c)(3) (but not a college or university) if first, at least 15 unrelated persons paid amounts to the organization for qualified research during the calendar year in which the taxable year of the taxpayer begins, second, no three persons paid more than 50 percent of such amounts, and third, no one person paid more than 20 percent of such amounts.

[4] In applying the start-up firm rules, the test is whether a taxpayer, in fact, both incurred qualified research expenses and had gross receipts in a particular year, not whether the taxpayer claimed a research tax credit for that year.

Effective Date

The provision is effective for expenditures paid or incurred during the period July 1, 1995, through December 31, 1997. Taxpayers may elect the alternative research credit regime (with lower fixed-base percentages and lower credit rates) for taxable years beginning after June 30, 1995. The special rule for payments made to a qualified research consortium is effective for taxable years beginning after June 30, 1995.

4. Contributions of appreciated stock to private foundations (sec. 13104 of the bill and sec. 170(e)(5) of the code)

Present and Prior Law

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the fair market value of property contributed to a charitable organization.[5] However, in the case of a charitable contribution of short-term gain, inventory, or other ordinary income property, the amount of the deduction generally is limited to the taxpayer's basis in the property. In the case of a charitable contribution of tangible personal property, the deduction is limited to the taxpayer's basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose (sec. 170(e)(1)(B)(i)).[6]

In cases involving contributions to a private foundation (other than certain private operating foundations), the amount of the deduction is limited to the taxpayer's basis in the property (sec. 170(e)(1)(B)(ii)). However, under a special rule contained in section 170(e)(5), taxpayers were allowed a deduction equal to the fair market value of qualified appreciated stock contributed to a private foundation prior to January 1, 1995. Qualified appreciated stock was defined as any stock of a corporation for which (as of the date of contribution) market quotations are readily available on an established securities market and which is capital gain property. The fair-market-value deduction for qualified appreciated stock donated to a private foundation applied only to the extent that the cumulative aggregate amount of donations made by the donor to one or more private foundations of stock in a particular corporation did not exceed 10 percent in value of the outstanding stock of that corporation. For this purpose, an individual was treated as making all contributions that were made by any member of the individual's family (as defined in sec. 267(c)(4)).

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[5] The amount of the deduction allowable for a taxable year with respect to a charitable contribution may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer (secs. 170(b) and 170(e)).

[6] As part of the Omnibus Budget Reconciliation Act of 1993, Congress eliminated the treatment of contributions of appreciated property (real, personal, and intangible) as a tax preference for alternative minimum tax [AMT] purposes. Thus, if a taxpayer makes a gift to charity of property (other than short-term gain, inventory, or other ordinary income property, or gifts to private foundations) that is real property, intangible property, or tangible personal property the use of which is related to the donee's tax-exempt purpose, the taxpayer is allowed to claim the same fair-market-value deduction for both regular tax and AMT purposes (subject to present-law percentage limitations).

Reasons for Change

The committee believes that, to encourage donations to charitable private foundations, it is appropriate to reinstate the special rule that allowed a fair market value deduction for certain gifts of appreciated stock to private foundations.

Explanation of Provision

The bill extends the special rule contained in section 170(e)(5) for contributions of qualified appreciated stock made to private foundations during the period January 1, 1995, through December 31, 1997.[7]

Effective Date

The provision is effective for contributions of qualified appreciated stock to private foundations made during the period January 1, 1995, through December 31, 1997.

5. Orphan drug tax credit (sec. 13105 of the bill and sec. 28 of the code)

Prior Law

Prior to January 1, 1995, a 50-percent nonrefundable tax credit was allowed under section 28 for a taxpayer's qualified clinical testing expenses paid or incurred in the testing of certain drugs for rare diseases or conditions, generally referred to as "orphan drugs." Qualified testing expenses are costs incurred to test an orphan drug after the drug has been approved for human testing by the Food and Drug Administration [FDA] but before the drug has been approved for sale by the FDA. A rare disease or condition is defined as one that first, affects less than 200,000 persons in the United States or second, affects more than 200,000 persons, but for which there is no reasonable expectation that businesses could recoup the costs of developing a drug for it from U.S. sales of the drug. These rare diseases and conditions include Huntington's disease, myoclonus, ALS (Lou Gehrig's disease), Tourette's syndrome, and Duchenne's dystrophy (a form of muscular dystrophy).

The orphan drug tax credit expired on December 31, 1994.

Reasons for Change

The committee believes that it is appropriate to reinstate the orphan drug tax credit.

Explanation of Provision

The orphan drug tax credit is extended for the period January 1, 1995, through December 31, 1997.

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[7] If, during this period, a taxpayer contributes qualified appreciated stock as defined in section 170(e)(5) and the amount of such contribution exceeds the percentage limitation under section 170(b)(1)(D), the excess may be carried over to succeeding taxable years. See, e.g., LTR 9444029, LTR 9424040.

Effective Date

The provision is effective for qualified clinical testing expenses paid or incurred during the period January 1, 1995, through December 31, 1997.

6. Permanent extension of FUTA exemption for alien agricultural workers (sec. 13106 of the bill and sec. 3306 of the code)

Prior Law

Generally, Federal Unemployment Tax [FUTA] is imposed on farm operators who first, employ 10 or more agricultural workers for some portion of each of 20 different days, each day being in a different calendar week or second, have a quarterly payroll for agricultural services of at least $20,000. An exclusion from FUTA was provided, however, for labor performed by an alien admitted to the United States to perform agricultural labor under sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act. This exclusion was effective for labor performed before January 1, 1995. For these purposes, the term agricultural labor generally has the same meaning (except for certain cooperative organizations) as used for FICA tax purposes.

Reasons for Change

The committee believes that the FUTA exemption is appropriate in light of the ineligibility of those workers for FUTA benefits. Further, a permanent extension will provide certainty to taxpayers, ease tax administration, and obviate the need for further short-term extensions.

Explanation of Provision

The bill permanently extends the exemption.

Effective Date

The provision is effective for labor performed on or after January 1, 1995.

7. Transportation fuels tax exemption for fuels used in commercial aviation (sec. 13111 of the bill and secs. 4081–4083, 4091–4093, 6421, and 6427 of the code)

Present Law

A 4.3-cents-per-gallon deficit reduction excise tax is imposed on fuel used in most transportation modes. Fuels subject to the tax include gasoline (including gasoline blended with alcohol, gasohol), diesel fuel, special motor fuels, propane, compressed natural gas, aviation fuels (jet fuel and gasoline), and any other motor fuel used in shipping in the inland waterway system. The transportation modes subject to tax include highway, rail, air, inland waterway, and motorboats and other recreational boats. Fuel consumed before October 1, 1995, in commercial aviation, defined as the air transportation of persons or property for hire, is exempt from this tax.

Revenues from this transportation fuels tax are deposited in the General Fund of the Treasury. This tax is separate from, and in addition to, any user-based excise taxes imposed on the same fuels to fund the Highway Trust Fund, the Airport and Airway Trust Fund, the Leaking Underground Storage Tank Trust Fund, the Inland Waterways Trust Fund, or the Aquatic Resources Trust Fund.

Reasons for Change

A major rationale for granting commercial aviation a temporary exemption from the transportation fuels tax in 1993 was the then existing economic condition of that industry. The economic condition of the industry has improved significantly since 1993; however, the recovery is not complete. Further, several questions have arisen regarding the relative excise tax burdens of different transportation modes and the Federal benefits received by payers of certain of those taxes. As a result, the committee determined that an additional temporary extension of the commercial aviation exemption, accompanied by a Treasury Department study of these burden/benefit issues, is appropriate.

Explanation of Provision

Extend exemption

The present exemption for commercial aviation fuels is extended for 2 years, through September 30, 1997. Thereafter, the full 4.3-cents-per-gallon tax will be imposed.

Treasury Department study

The bill also directs the Treasury Department, in consultation with the Transportation Department, to study the relative excise tax burdens of various modes of transportation and the Federal benefits derived from Federal expenditures related to those taxes by each such mode. The results of this study are required to be submitted to the House Committee on Ways and Means and the Senate Committee on Finance no later than June 30, 1996.

Effective Date

The provision generally is effective after September 30, 1995.

Under present law, this excise tax will be imposed on transactions occurring after September 30, 1995, and the floor stocks tax imposed by the Omnibus Budget Reconciliation Act of 1993 will be imposed on October 1, 1995. While the provision defers this imposition for 2 years, retroactive to October 1, 1995, it is unlikely that this legislation will be enacted before these taxes take effect. Therefore, the provision provides refunds to commercial aviation users for any such taxes paid before enactment upon adequate documentation that tax-paid fuel was purchased. The committee further wishes to express its desire that the Internal Revenue Service consider waiving the semimonthly deposit requirements for this tax during the period beginning on October 1, 1995, and ending on the date on which 1995 budget reconciliation process is completed.

Appropriate floor stocks taxes will be imposed on October 1, 1997.

8. Extension of airport and airway trust fund excise taxes (sec. 13116 of the bill and secs. 4041, 4091–4093, 4261–4263, and 4271–4272 of the code)

Present Law

Five separate excise taxes are imposed under present law to fund the Federal Airport and Airway Trust Fund program. In general, these taxes are scheduled to expire after December 31, 1995. Current trust fund authorizations extend through September 30, 1996. The aviation excise taxes are:

(1) a 10-percent tax on domestic passenger tickets;

(2) a 6.25-percent tax on domestic freight waybills;

(3) a $6-per-person tax on international departures;

(4) a 17.5-cents-per-gallon tax on jet fuel used in noncommercial aviation; and

(5) a 15-cents-per-gallon tax on gasoline used in noncommercial aviation.

Reasons for Change

Expenditure authorization for the Federal Airport and Airway Trust Fund currently extends 9 months beyond the scheduled expiration of excise taxes funding that Trust Fund. Further, these excise taxes are assumed permanent under the Budget Enforcement Act; failure to extend them would result in higher Federal deficit projections in January 1996. To avoid this budgetary problem, and to allow a full review of these taxes when the trust fund program is reauthorized, the committee decided to extend the trust fund taxes for 9 months.

Explanation of Provision

The current Airport and Airway Trust Fund excise taxes, and transfer of these revenues to the trust fund, are extended for 9 months, through September 30, 1996.

Effective Date

The provision is effective on the date of enactment.

SUBTITLE B. MEDICAL SAVINGS ACCOUNTS

(Sec. 13201 of the bill and secs. 106, 220, 3121(a), 3231(e), 3306(b), 4975(c), and 6693 of the code)

Present Law

Under present law, the tax treatment of health insurance expenses depends on whether the taxpayer is an employee or self-employed individual, and whether the taxpayer is covered under a health plan paid for by the employee's employer. An employer's contribution to a plan providing accident or health coverage for the employee and the employee's spouse and dependents is excludable from an employee's income. In addition, businesses generally can deduct, as an employee compensation expense, the full cost of any health insurance coverage provided for their employees. The exclusion and deduction are generally also available in the case of owners of subchapter C corporations who are also employees.

In the case of self-employed individuals (sole proprietors or partners in a partnership) no equivalent exclusion applies. However, present law provides a deduction for 30 percent of the amount paid for health insurance for a self-employed individual and the individual's spouse and dependents. The 30-percent deduction is also available to more than 2-percent shareholders of subchapter S corporations.

Individuals who itemize deductions may deduct amounts paid during the taxable year (if not reimbursed by insurance or otherwise) for medical care (including medical insurance) of the taxpayer and the taxpayer's spouse and dependents, to the extent that the total of such expenses exceeds 7.5 percent of the taxpayer's adjusted gross income [AGI].

There are no specific tax provisions for medical savings accounts.

Reasons for Change

The fact that Americans with conventional health insurance have few incentives to buy medical services carefully or benefit from staying well are major factors affecting health care cost growth. One approach to providing incentives for Americans to be more cost conscious purchasers of medical services is to make available alternatives to conventional insurance such as medical savings accounts [MSA's]. MSA's will give people more control over their health care dollars. Because MSA's afford people the opportunity to save unspent MSA funds for future health care needs and for retirement income, the committee believes that people will be more careful in their purchase of health care services.

Explanation of Provision

In general

In general, the bill permits individuals (including self-employed individuals) who are covered only by a catastrophic health plan to maintain a medical savings account [MSA]. Within limits, contributions to an MSA are deductible if made by the individual, or alternatively, are excludable from an employee's income if made by the employer. An individual is not eligible to make deductible contributions if the individual's employer makes contributions to an MSA for the individual. In general, the aggregate amount of individual or employer contributions that could be deducted or excluded for a taxable year is the lesser of: First, the deductible under the catastrophic health plan, or second, $2,500 if the catastrophic health plan only provides individual coverage or $5,000 if the catastrophic health plan also covers the individual's spouse and/or dependents. These dollar limits are indexed annually based on the medical care component of the Consumer Price Index [CPI] (rounded to the nearest multiple of $50). Income earned on amounts held in an MSA are currently includible in income. Withdrawals from an MSA are excludable from income if used for medical expenses for the individual and his or her spouse or dependents.

Deductible contributions to MSA's

Under the bill, a deductible contribution could be made to an MSA for any month in which the individual is an eligible individual. The deduction limit is the same for self-employed individuals as for other individuals. In general, a person is an eligible individual for a month if, as of the first day of the month, he or she is covered under a catastrophic health plan. However, an individual is not eligible if the individual is also covered by another health plan (other than a plan that provides certain permitted coverage) which is not a catastrophic health plan and which provides coverage for benefits provided by the catastrophic health plan. An individual with other coverage in addition to a catastrophic plan is still eligible to make deductible contributions to an MSA if such other coverage is certain permitted insurance[8] or is coverage (whether provided through insurance or otherwise) for accidents, dental care, vision care, or long-term care. Thus, for example, an individual whose only health plan coverage is a catastrophic health plan and a flexible spending arrangement under which the only health expenses that may be reimbursed are expenses for dental and vision care is an eligible individual.

A catastrophic health plan is defined as a health plan that has a deductible amount of at least $1,500 (or $3,000 if the plan provides coverage for more than one individual). These dollar amounts are indexed annually for medical inflation provided to the nearest multiple of $50.

No deduction is allowed for a taxable year if any employer contributions are made to an MSA on behalf of an individual during such year. (As discussed below, such employer contributions are excludable from income, subject to the same limits as deductible contributions.)

The maximum annual deductible contribution to an MSA is determined separately for each month based on the individual's status as of the first day for each month, including: First, Whether the individual is an eligible individual, second, whether the catastrophic health plan covers only the individual or also a spouse and dependents, and third, the amount of the deductible under the catastrophic health plan. In general, the maximum annual deductible contribution is the sum of the following amounts determined separately for each month: First, one-twelfth of the lesser of $2,500 or the deductible under the catastrophic health plan for each month in which the individual is an eligible individual and the catastrophic health plan covers only the individual; and second, one-twelfth of the lesser of $5,000 or the deductible under the catastrophic health plan for each month in which the individual is an eligible individual and the catastrophic health plan also covers the individual's spouse and/or dependents.

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[8] The following types of insurance are permitted insurance and therefore do not preclude an individual from making a deductible contribution to an MSA: First, Medicare supplemental insurance; second, insurance if substantially all of the coverage provided under such insurance relates to (a) liabilities incurred under workers' compensation laws, (b) tort liabilities, (c) liabilities relating to ownership or use of property (e.g., auto insurance), (d) credit insurance, or (e) such other similar liabilities as the Secretary may prescribe by regulations; third, insurance for a specified disease or illness; and fourth, insurance that provides a fixed payment for hospitalization.

The deduction limit generally is determined separately for each spouse of a married couple. If both spouses are covered under the same catastrophic health plan, then the $5,000 deduction limit is divided equally between the spouses unless they agree on a different division (in the time and manner prescribed by the Secretary). In such a case, no deduction is allowed with respect to either spouse if an employer contribution is made to an MSA on behalf of either of the spouses. If either spouse or any dependent is covered under another catastrophic health plan, the maximum deductible contribution for each spouse is no more than $2,500.

Permitted deductions for contributions to an MSA are taken into account in arriving at adjusted gross income (i.e., "above the line"). No deduction is allowed to an individual if any other person is entitled to a personal exemption on account of such individual, whether or not such personal exemption is actually taken.

Contributions to an MSA for a taxable year could be made until the due date for filing the individual's tax return for the year (determined without regard to extensions).

Employer contributions to an MSA

Employer contributions to an MSA on behalf of an eligible individual are excludable from gross income and are not considered wages for employment tax purposes. The amount excludable could not exceed the deduction limit applicable to the individual. The exclusion applies whether or not the employee may choose to have the amounts contributed to an MSA or another health plan. For example, there is no income inclusion merely because the employee may choose between a catastrophic health plan with an employer contribution to an MSA and coverage under another (noncatastrophic) health plan. Employer contributions to an MSA are not excludable from income if made at the election of the employee (i.e., pursuant to a salary reduction arrangement under a cafeteria plan). Any employer contribution to an MSA (if otherwise allowable as a deduction) is allowed only for the taxable year in which paid.

The bill does not specify the timing of employer contributions. Thus, for example, an employer could make monthly contributions or a single annual contribution to an MSA.

Definition and tax treatment of MSA's

In general, an MSA is a trust (or a custodial account) created exclusively for the purpose of paying the qualified medical expenses of the account holder (or his or her spouse or dependents) that meets requirements similar to those applicable to individual retirement arrangements [IRA's].[9] The trustee of an MSA could be a bank, insurance company, or other person that demonstrates to the satisfaction of the Secretary that the manner in which such person

[9] For example, MSA contributions (other than amounts rolled over from another MSA) must be in cash, no MSA assets could be invested in life insurance contracts, MSA assets could not be commingled with other property except in a common trust fund or common investment fund, and an account holder's interest in an MSA is required to be nonforfeitable. In addition, if an account holder engages in a prohibited transaction with respect to an MSA or pledges assets in an MSA, rules similar to those for IRA's apply, and any amounts treated as distributed to the account holder under these rules are treated as not used for qualified medical expenses.

will administer the trust will be consistent with applicable requirements.

The holder of an MSA must currently include earnings on MSA assets in gross income. Any capital losses on MSA assets could be used only to offset capital gains on MSA assets. Unused capital losses could be carried forward to succeeding taxable years to offset future gains on MSA assets.

An MSA trustee is required to make such reports as may be required by the Secretary. A $50 penalty is imposed for each failure to file without reasonable cause.

Distributions from an MSA

Distributions from an MSA that are used to pay the qualified medical expenses (not reimbursed by insurance or otherwise) of the individual or the individual's spouse or dependents are excludable from gross income whether or not the individual is an eligible individual at the time of the distribution. Distributions for qualified medical expenses of the individual's spouse and dependents are permitted even if the catastrophic health plan only covers the individual. Qualified medical expenses are generally defined as under the rules relating to the itemized deduction for medical expenses (sec. 213). However, for this purpose qualified medical expenses do not include any insurance premiums (including premiums for the catastrophic health plan), except for premiums for long-term care insurance. Distributions from an MSA that are excludable from gross income under the bill could not be taken into account for purposes of the itemized deduction for medical expenses.

Distributions for purposes other than qualified medical expenses are subject to an ordering rule so that such distributions are includible in income until the amount of previously deducted or excluded contributions have been exhausted. Under the bill, amounts not used for qualified medical expenses are included in gross income to the extent such distributions do not exceed the excess of first, the aggregate contributions to such account which were deductible or excludable from gross income, over second, the aggregate prior payments from such account which were includible in gross income. For this purpose, all MSA's of the account holder are aggregated and all distributions during a taxable year are treated as a single distribution. An additional tax of 10 percent of the amount includible in income also apply unless the distribution is made after the individual attains the age of 59½, dies or becomes disabled.

Distributions upon the death of the account holder are subject to rules similar to the rules applicable to IRA's.

Rollovers from one MSA to another MSA are permitted without income inclusion if made within 60 days of distribution.

The bill includes a correction mechanism so that if contributions for a year (whether made by the individual or the employer) exceed the deduction limit for the year, the excess contribution can be withdrawn tax free. In order for tax-free treatment to apply, the excess contributions must be withdrawn before the due date (including extensions) for filing the individual's tax return for the year and be accompanied by the amount of income attributable to such contribution.

Effective Date

The provision is effective with respect to taxable years beginning after December 31, 1995.

SUBTITLE C. PICKLE-JOHNSON TAXPAYER BILL OF RIGHTS 2

1. Taxpayer Advocate

a. Establishment of position of Taxpayer Advocate within Internal Revenue Service (sec. 13301 of the bill and sec. 7802 of the code)

Present Law

The Office of the Taxpayer Ombudsman was created by the Internal Revenue Service [IRS] in 1979. The Taxpayer Ombudsman's duties are to serve as the primary advocate, within the IRS, for taxpayers. As the taxpayers' advocate, the Taxpayer Ombudsman participates in an ongoing review of IRS policies and procedures to determine their impact on taxpayers, receives ideas from the public concerning tax administration, identifies areas of the tax law that confuse or create an inequity for taxpayers, and supervises cases handled under the Problem Resolution Program. Under current procedures, the Taxpayer Ombudsman is selected by the Commissioner of the IRS and serves at the Commissioner's discretion.

Reasons for Change

To date, the Taxpayer Ombudsman has been a career civil servant selected by and serving at the pleasure of the IRS Commissioner. Some may perceive that the Taxpayer Ombudsman is not an independent advocate for taxpayers. In order to ensure that the Taxpayer Ombudsman has the necessary stature within the IRS to represent fully the interests of taxpayers, it is believed to be appropriate that the position be elevated to a position comparable to that of the Chief Counsel. In addition, in order to ensure that the Congress is systematically made aware of recurring and unresolved problems and difficulties taxpayers encounter in dealing with the IRS, the Taxpayer Ombudsman should have the authority and responsibility to make independent reports to the Congress in order to advise the tax-writing committees of those areas.

Explanation of Provision

The bill establishes a new position, Taxpayer Advocate, within the IRS. This replaces the position of Taxpayer Ombudsman. The Taxpayer Advocate is appointed by and reports directly to the Commissioner. Compensation of the Taxpayer Advocate is at a level equal to that of the highest level official reporting directly to the Deputy Commissioner of the IRS.

The bill also establishes the Office of Taxpayer Advocate within the IRS. The functions of the office are first, to assist taxpayers in resolving problems with the IRS, second, to identify areas in which taxpayers have problems in dealings with the IRS, third, to propose changes (to the extent possible) in the administrative practices of the IRS that will mitigate those problems, and fourth, to identify potential legislative changes that may mitigate those problems.

While the Taxpayer Advocate would not have direct line authority over the regional and local Problem Resolution Officers [PRO's], the committee believes that all PRO's should take direction from the Taxpayer Advocate and that they should operate with sufficient independence to assure that taxpayer rights are not being subordinated to pressure from local revenue officers, district directors, etc. Accordingly, the committee recommends and encourages that regional PRO's actively participate in the selection and evaluation of local PRO's.

The Taxpayer Advocate is required to make two annual reports to the tax-writing committees. The first report is to contain the objectives of the Taxpayer Advocate for the next calendar year. This report is to contain full and substantive analysis, in addition to statistical information, and is due not later than June 30 of each year.

The second report is on the activities of the Taxpayer Advocate during the previous fiscal year. The report must identify the initiatives the Taxpayer Advocate has taken to improve taxpayer services and IRS responsiveness, contain recommendations received from individuals who have the authority to issue a Taxpayer Assistance Order [TAO], describe in detail the progress made in implementing these recommendations, contain a summary of at least 20 of the most serious problems which taxpayers have in dealing with the IRS, include recommendations for such administrative and legislative action as may be appropriate to resolve such problems, describe the extent to which regional problem resolution officers participate in the selection and evaluation of local problem resolution officers, and to include other such information as the Taxpayer Advocate may deem advisable. The Commissioner is required to establish internal procedures that will ensure a formal IRS response within 3 months to all recommendations submitted to the Commissioner by the Taxpayer Advocate. This second report is due not later than December 31 of each year.

The reports submitted to Congress by the Taxpayer Advocate are not subject to prior review by the Commissioner, the Secretary of the Treasury, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget. The objective is for Congress to receive an unfiltered and candid report of the problems taxpayers are experiencing and what can be done to address them. The reports by the Taxpayer Advocate are not official legislative recommendations of the Administration; providing official legislative recommendations remains the responsibility of the Department of Treasury.

Effective Date

The provision is effective on the date of enactment. The first annual reports of the Taxpayer Advocate are due in June and December, 1996.

b. Expansion of authority to issue Taxpayer Assistance Orders (sec. 13302 of the bill and sec. 7811 of the code)

Present Law

Section 7811(a) authorizes the Taxpayer Ombudsman to issue a Taxpayer Assistance Order [TAO]. TAO's may order the release of taxpayer property levied upon by the IRS and may require the IRS to cease any action, or refrain from taking any action if, in the determination of the Taxpayer Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered.

Reasons for Change

The requirement that the significant hardship be as a result of the manner in which the internal revenue laws are being administered has resulted in confusion as to the circumstances which justify the issuance of a TAO. The most frequent situation where a TAO may be needed, but may not be authorized under present law, involves income tax refunds that are needed to relieve severe hardship of taxpayers. Another example involves the reissuance of refund checks which have been sent by the IRS to an address at which the taxpayer no longer resides. While the mailing of the check to the incorrect address might in no way be due to the fault of the IRS, the normal delays in reissuing such a check may cause great hardship for the taxpayer. Also, the IRS Collection Division may take an enforcement action when the taxpayer has had no actual notice of the deficiency and is not afforded any opportunity to obtain an administrative review of the validity of the tax deficiency. In cases like these, it may be appropriate for the Taxpayer Advocate to issue a TAO to temporarily stay the IRS collection action in order to allow for a review of the appropriateness of the proposed action.

Explanation of Provision

The bill provides the Taxpayer Advocate with broader authority to affirmatively take any action as permitted by law with respect to taxpayers who would otherwise suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws. In addition, the bill provides that a TAO may specify a time period within which the TAO must be followed. Finally, the bill provides that only the Taxpayer Advocate, the Commissioner of the IRS, the Deputy Commissioner, or a regional problem resolution officer, may modify or rescind a TAO. Any official who modifies or rescinds a TAO must provide the Taxpayer Advocate a written explanation of the reasons for the modification or rescission.

Effective Date

The provision is effective on the date of enactment.

2. Modifications to installment agreement provisions

a. Notification of reasons for termination of installment agreements (sec. 13306 of the bill and sec. 6159 of the code)

Present Law

Section 6159 authorizes the IRS to enter into written installment agreements with taxpayers to facilitate the collection of tax liabilities. In general, the IRS has the right to terminate (or in some instances, alter or modify) such agreements if the taxpayer provided inaccurate or incomplete information before the agreement was entered into, if the taxpayer fails to make a timely payment of an installment or another tax liability, if the taxpayer fails to provide the IRS with a requested update of financial condition, if the IRS determines that the financial condition of the taxpayer has changed significantly, or if the IRS believes collection of the tax liability is in jeopardy. If the IRS determines that the financial condition of a taxpayer that has entered into an installment agreement has changed significantly, the IRS must provide the taxpayer with a written notice that explains the IRS determination at least 30 days before altering, modifying or terminating the installment agreement. No notice is statutorily required if the installment agreement is altered, modified, or terminated for other reasons.

Reasons for Change

The committee believes that the IRS generally should notify taxpayers if an installment agreement is altered, modified, or terminated.

Explanation of Provision

The bill requires the IRS to notify taxpayers 30 days before altering, modifying, or terminating any installment agreement for any reason other than that the collection of tax is determined to be in jeopardy. The IRS must include in the notification an explanation of why the IRS intends to take this action.

Effective Date

The provision is effective 6 months after the date of enactment.

b. Administrative review of termination of installment agreements (sec. 13307 of the bill and sec. 6159 of the code)

Present Law

The IRS is currently testing an appeal process for various collection actions, including installment agreements, that will permit taxpayers to appeal these collection actions to Appeals Division personnel.

Reasons for Change

The committee believes that taxpayers should be able to obtain an independent administrative review of terminations of installment agreements.

Explanation of Provision

The bill requires the IRS to establish additional procedures for an independent administrative review of terminations of installment agreements for taxpayers who request a review.

Effective Date

The provision is effective on January 1, 1996.

3. Abatement of interest and penalties

a. Expansion of authority to abate interest (sec. 13311 of the bill and sec. 6404 of the code)

Present Law

Any assessment of interest on any deficiency attributable in whole or in part to any error or delay by an officer or employee of the IRS (acting in his official capacity) in performing a ministerial act may be abated.

Reasons for Change

The committee believes that it is appropriate to expand the authority to abate interest to include delays caused by managerial acts of the IRS.

Explanation of Provision

The bill permits the IRS to abate interest with respect to any unreasonable error or delay resulting from managerial acts as well as ministerial acts. This would include extensive delays resulting from managerial acts such as: the loss of records by the IRS, IRS personnel transfers, extended illnesses, extended personnel training, or extended leave. On the other hand, interest would not be abated for delays resulting from general administrative decisions. For example, the taxpayer could not claim that the IRS's decision on how to organize the processing of tax returns or its delay in implementing an improved computer system resulted in an unreasonable delay in the Service's action on the taxpayer's tax return, and so the interest on any subsequent deficiency should be waived.

Effective Date

The provision applies to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of enactment.

b. Review of IRS failure to abate interest (sec. 13312 of the bill and sec. 6404 of the code)

Present Law

Federal courts generally do not have the jurisdiction to review the IRS's failure to abate interest.

Reasons for Change

The committee believes that it is appropriate for the Tax Court to have jurisdiction to review IRS's failure to abate interest with respect to certain taxpayers.

Explanation of Provision

The bill grants the Tax Court jurisdiction to determine whether the IRS's failure to abate interest for an eligible taxpayer was an abuse of discretion. The action must be brought within 6 months after the date of the Secretary's final determination not to abate interest. An eligible taxpayer must meet the net worth and size requirements imposed with respect to awards of attorney's fees. No inference is intended as to whether under present law any court has jurisdiction to review IRS's failure to abate interest.

Effective Date

The provision applies to requests for abatement after the date of enactment.

c. Extension of interest-free period for payment of tax after notice and demand (sec. 13313 of the bill and sec. 6601 of the code)

Present Law

In general, a taxpayer must pay interest on late payments of tax. An interest-free period of 10 calendar days is provided to taxpayers who pay the tax due within 10 calendar days of notice and demand.

Reasons for Change

The 10-day interest-free period was designed to give taxpayers time to receive the notice and pay the amount due. Because it may be very difficult for some taxpayers to remit payment within the 10-day period, particularly if the mail has delayed delivery of the notice, the IRS must recompute interest and send another notice to taxpayers.

Explanation of Provision

The bill extends the interest-free period provided to taxpayers for the payment of the tax liability reflected in the notice from 10 calendar days to 10 business days (21 calendar days, provided that the total tax liability shown on the notice of deficiency is less than $100,000).

Effective Date

The provision applies in the case of any notice and demand given after June 30, 1996.

4. Joint returns

a. Studies of joint and several liability for married persons filing joint tax returns and other joint return-related issues (sec. 13316 of the bill)

Present Law

Spouses who file a joint tax return are each fully responsible for the accuracy of the return and for the full tax liability. This is true even though only one spouse may have earned the wages or income which is shown on the return. This is "joint and several" liability. Spouses who wish to avoid joint liability may file as a "married person filing separately."

Spouses often file a joint tax return but then later are separated or divorced. If the IRS later disputes the accuracy of the joint tax returns, one spouse may be held liable for the entire tax deficiency stemming from erroneous deductions or omitted income attributable to the other spouse. Therefore, the "innocent" spouse may be held liable for the full deficiency in a subsequent audit occurring after the separation or divorce. This has resulted in a serious hardship being imposed on an "innocent spouse" in a number of cases.

In some cases, a couple addresses the responsibility for tax liability as part of their divorce decree. However, these agreements are not binding on the IRS because the IRS was not a party to the divorce proceeding. Thus, if a former spouse violates the tax responsibilities assigned to him or her in a divorce decree, the other spouse may not rely on the decree in dealing with the IRS.

While present law does contain provisions which give relief to certain innocent spouses in these situations, the provisions are narrowly drawn and strictly interpreted. Therefore, many former spouses are not able to qualify for the protections of the current "innocent spouse" rules.

In 1930, the Supreme Court ruled in *Poe* v. *Seaborn*, 282 U.S. 101 (1930), that all the earnings of a married couple in community property States were part of the marital property to which each spouse had an equal right. At the time, married couples generally welcomed this decision because it allowed couples in community property States to benefit from income "splitting" between the husband and wife for income tax purposes. Later, the Federal tax law was changed to allow all married taxpayers to "split" their income by means of filing a joint tax return.

While the income-splitting effect of *Poe* v. *Seaborn* is now moot, the decision continues to affect married couples in community property States, but in an adverse way. For example, there are cases where a divorced spouse owes the IRS a tax liability based on his or her joint return filed during the marital years. When this spouse remarries, the new spouse's income may become subject to levy in order to satisfy the tax deficiency of the prior spouse. In contrast, if the couple did not live in a community property State, the second spouse's wages could not be levied to pay a tax liability arising from this spouse's first marriage.

Reasons for Change

The committee believes that the traditional standard of joint and several liability for married couples filing a joint tax return should be reexamined.

Explanation of Provision

The bill directs the Treasury Department and the General Accounting Office [GAO] to conduct separate studies analyzing the following:

(1) The effects of changing the current standard of "joint and several" liability for married couples to a "proportionate" liability standard. That is, each spouse would be liable only for the income tax attributable to the income of each spouse.

(2) The effects of requiring the IRS to be bound by the terms of a divorce decree which addresses the responsibility for the tax liability on prior joint tax returns.

(3) Whether the current "innocent spouse" provisions provide meaningful relief to former spouses.

(4) The effects of overturning the application of *Poe* v. *Seaborn* for income tax purposes in community property States.

The Treasury Department and the GAO must examine the tax policy implications, the equity implications, and operational changes which would face the IRS if the liability standard were changed. For example, the studies must consider how a system of proportionate liability would change the way the IRS communicates with taxpayers, conducts audits of joint returns, and enforces tax lien and levies against married couples.

Effective Date

The studies are due 6 months after the date of enactment.

b. Joint return may be made after separate returns without full payment of tax (sec. 13317 of the bill and sec. 6013 of the code)

Present Law

Taxpayers who file separate returns and subsequently determine that their tax liability would have been less if they had filed a joint return are precluded by statute from reducing their tax liability by filing jointly if they are unable to pay the entire amount of the joint return liability before the expiration of the 3-year period for making the election to file jointly.

Reasons for Change

Not all taxpayers are able to pay the full amount owed on their returns by the filing deadline. In such circumstances, the IRS encourages the taxpayer to pay the tax as soon as possible or enter into an installment agreement. However, taxpayers who file separate returns and subsequently determine that their tax liability would have been less if they had filed a joint return are precluded from reducing their tax liability by filing jointly if they are unable to pay the entire amount of the joint return liability. This rule may be unfair to taxpayers experiencing financial difficulties.

Explanation of Provision

The bill repeals the requirement of full payment of tax liability as a precondition to switching from married filing separately status to married filing jointly status.

Effective Date

The provision applies to taxable years beginning after the date of the enactment.

c. Disclosure of collection activities with respect to joint returns (sec. 13318 of the bill and sec. 6103 of the code)

Present Law

The IRS does not routinely disclose collection information to a former spouse that relates to tax liabilities attributable to a joint return that was filed when married.

Reasons for Change

The committee believes that it is appropriate to require the IRS to discuss with one former spouse the efforts it has made to collect the joint return tax liability from the other spouse.

Explanation of Provision

If a tax deficiency with respect to a joint return is assessed, and the individuals filing the return are no longer married or no longer reside in the same household, the bill requires the IRS to disclose in writing (in response to a written request by one of the individuals) to that individual whether the IRS has attempted to collect the deficiency from the other individual, the general nature of the collection activities, and the amount (if any) collected.

Such requests must be made in writing. The IRS may develop procedures to address the frequency of such requests in order to prevent taxpayers from abusing this provision by making numerous requests without good cause. For example, one request per quarter would be a reasonable rate unless the taxpayer had good cause to seek more frequent information.

In making these disclosures, the IRS may omit the current home address and business location of the former spouse. This is designed to prevent the disclosure of such personal information to persons who might be hostile towards a former spouse.

Effective Date

The provision is effective on the date of enactment.

5. Collection activities

a. Modifications to lien and levy provisions

i. Withdrawal of public notice of lien (sec. 13321(a) of the bill and sec. 6323 of the code)

Present Law

The IRS must file a notice of lien in the public record, in order to protect the priority of a tax lien. A notice of tax lien provides public notice that a taxpayer owes the government money. The IRS has discretion in filing such a notice, but may withdraw a filed notice only if the notice (and the underlying lien) was erroneously filed or if the underlying lien has been paid, bonded, or become unenforceable.

Reasons for Change

The committee believes that it is appropriate to give the IRS discretion to withdraw a notice of lien in other situations as well.

Explanation of Provision

The bill allows the IRS to withdraw a public notice of tax lien prior to payment in full by the indebted taxpayer without prejudice, if the Secretary determines that first, the filing of the notice was premature or otherwise not in accordance with the administrative procedures of the IRS, second, the taxpayer has entered into an installment agreement to satisfy the tax liability with respect to which the lien was filed, third, the withdrawal of the lien will facilitate collection of the tax liability, or fourth, the withdrawal of the lien would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and of the government. The IRS must also provide a copy of the notice of withdrawal to the taxpayer. The bill also requires that, at the written request of the taxpayer, the IRS make reasonable efforts to give notice of the withdrawal of a lien to creditors, credit reporting agencies, and financial institutions specified by the taxpayer.

Effective Date

The provision is effective on the date of enactment.

ii. Return of levied property (sec. 13321(b) of the bill and sec. 6343 of the code)

Present Law

The IRS is authorized to levy on the property of a taxpayer as a means of collecting unpaid taxes. The IRS is able to return levied property to a taxpayer only when the taxpayer has overpaid its liability with respect to tax, interest, and penalty for which the property was levied.

Reasons for Change

There are several situations where the IRS is not authorized return levied-upon amounts, even when it believes doing so would be equitable and in the best interests of the taxpayer and the government. For example, if the IRS enters into an installment agreement and, in contradiction to the terms of the installment agreement, the IRS levies on the taxpayer's property, the IRS is prohibited from returning the property to the taxpayer. The committee believes that it is appropriate to give the IRS authority to return levied property in other circumstances as well.

Explanation of Provision

The bill allows the IRS to return property (including money deposited in the Treasury) that has been levied upon if the Secretary determines that first, the levy was premature or otherwise not in accordance with the administrative procedures of the IRS, second, the taxpayer has entered into an installment agreement to satisfy the tax liability, third, the return of the property will facilitate collection of the tax liability, or fourth, the return of the property would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the government.

Effective Date

The provision is effective on the date of enactment.

iii. Modifications in certain levy exemption amounts (sec. 13321(c) of the bill and sec. 6334 of the code)

Present Law

Property exempt from levy includes personal property with a value of up to $1,650.

Reasons for Change

The committee believes that this amount should be increased and indexed for inflation.

Explanation of Provision

The bill increases the exemption amount to $2,500 for personal property. This amount is indexed for inflation commencing January 1, 1996.

Effective Date

The provision is effective with respect to levies issued after December 31, 1995.

b. Offers-in-compromise (sec. 13322 of the bill and sec. 7122 of the code)

Present Law

The IRS has the authority to settle a tax debt pursuant to an offer-in-compromise. IRS regulations provide that such offers can be accepted if: the taxpayer is unable to pay the full amount of the tax liability and it is doubtful that the tax, interest, and penalties can be collected or there is doubt as to the validity of the actual tax liability. Amounts over $500 can only be accepted if the reasons for the acceptance are documented in detail and supported by an opinion of the IRS chief counsel.

Reasons for Change

The committee believes that the $500 threshold amount requiring a written opinion from the IRS chief counsel slows the approval process for most offers-in-compromise and is unnecessarily low.

Explanation of Provision

The bill increases from $500 to $100,000 the amount requiring a written opinion from the Office of Chief Counsel. Compromises below the $100,000 threshold must be subject to continuing quality review by the IRS.

Effective Date

The provision is effective on the date of enactment.

6. Information returns

a. Civil damages for fraudulent filing of information returns (sec. 13326 of the bill and new sec. 7434 of the code)

Present Law

Federal law provides no private cause of action to a taxpayer who is injured because a fraudulent information return has been filed with the IRS asserting that payments have been made to the taxpayer.

Reasons for Change

Some taxpayers may suffer significant personal loss and inconvenience as the result of the IRS receiving fraudulent information returns, which have been filed by persons intent on either defrauding the IRS or harassing taxpayers.

Explanation of Provision

The bill provides that, if any person willfully files a fraudulent information return with respect to payments purported to have been made to another person, the other person may bring a civil action for damages against the person filing that return. A copy of the complaint initiating the action must be provided to the IRS. Recoverable damages are the greater of first, $5,000 or second, the amount of actual damages (including the costs of the action) and, in the court's discretion, reasonable attorney's fees. The court must specify in any decision awarding damages the correct amount (if any) that should have been reported on the information return. An action seeking damages under this provision must be brought within 6 years after the filing of the fraudulent information return, or 1 year after the fraudulent information return would have been discovered through the exercise of reasonable care, whichever is later.

Effective Date

The provision applies to fraudulent information returns filed after the date of enactment.

b. Requirement to conduct reasonable investigations of information returns (sec. 13327 of the bill and sec. 6201 of the code)

Present Law

Deficiencies determined by the IRS are generally afforded a presumption of correctness.

Reasons for Change

Taxpayers may encounter difficulties when a payor issues an erroneous information return and refuses to correct the information and report the change to the IRS, or when a fraudulent information return is filed.

Explanation of Provision

The bill provides that, in any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return (form 1099 or form W–2) filed by a third party and the taxpayer has fully cooperated with the IRS, the government has the burden of producing reasonable and probative information concerning the deficiency (in addition to the information return itself). Fully cooperating with the IRS includes (but is not limited to) the following: bringing the reasonable dispute over the item of income to the attention of the IRS within a reasonable period of time, and providing (within a reasonable period of time) access to and inspection of all witnesses, information, and documents within the control of the taxpayer (as reasonably requested by the Secretary).

Effective Date

The provision is effective on the date of enactment.

7. Awarding of costs and certain fees

a. United States must establish that its position in a proceeding was substantially justified (sec. 13331 of the bill and sec. 7430 of the code)

Present Law

Under section 7430, a taxpayer who successfully challenges a determination of deficiency by the IRS may recover attorney's fees and other administrative and litigation costs if the taxpayer qualifies as a "prevailing party." A taxpayer qualifies as a prevailing party if it: First, establishes that the position of the United States was not substantially justified; second, substantially prevails with respect to the amount in controversy or with respect to the most significant issue or set of issues presented; and third, meets certain net worth and (if the taxpayer is a business) size requirements. A taxpayer must exhaust administrative remedies to be eligible to receive an award of attorney's fees.

Reasons for Change

The committee believes that it is appropriate for the IRS to demonstrate that it was substantially justified in maintaining its position when the taxpayer substantially prevails and that the IRS should be required to follow its published guidance and private guidance provided to taxpayers.

Explanation of Provision

The bill provides that, once a taxpayer substantially prevails over the IRS in a tax dispute, the IRS has the burden of proof to establish that it was substantially justified in maintaining its position against the taxpayer. This will switch the current procedure which places the burden of proof on the taxpayer to establish that the IRS was not substantially justified in maintaining its position. Therefore, the successful taxpayer will receive an award of attorney's fees unless the IRS satisfies its burden of proof. The bill also establishes a rebuttable presumption that the position of the United States was not substantially justified if the IRS did not follow in the administrative proceeding first, its published regulations, revenue rulings, revenue procedures, information releases, notices, or announcements, or second, a private letter ruling, determination letter, or technical advice memorandum issued to the taxpayer. This provision only applies to the version of IRS guidance that is most current on the date the IRS's position was taken.

Effective Date

The provision is effective for proceedings commenced after the date of enactment.

b. Increased limit on attorney's fees (sec. 13332 of the bill and sec. 7430 of the code)

Present Law

Attorney's fees recoverable by prevailing parties as litigation or administrative costs was originally set at $75 per hour.

Reasons for Change

The committee believes that these amounts should be raised and indexed for inflation.

Explanation of Provision

The bill raises the statutory rate to $110 per hour, indexed for inflation beginning after 1996.

Effective Date

The provision applies to proceedings commenced after the date of enactment.

c. Failure to agree to extension not taken into account (sec. 13333 of the bill and sec. 7430 of the code)

Present Law

To qualify for an award of attorney's fees, the taxpayer must have exhausted the administrative remedies available within the IRS.

Reasons for Change

The IRS has taken the position in regulations that attorney's fees cannot be awarded if the taxpayer has not agreed to extend the statute of limitations. In *Minahan* v. *Commissioner*, 88 T.C. 492 (1987), the Tax Court held that regulation invalid insofar as it provides that a taxpayer's refusal to consent to extend the statute of limitations is to be taken into account in determining whether the taxpayer has exhausted administrative remedies available to the taxpayer.

Explanation of Provision

The bill provides that any failure to agree to an extension of the statute of limitations cannot be taken into account for purposes of determining whether a taxpayer has exhausted the administrative remedies for purposes of determining eligibility for an award of attorney's fees.

Effective Date

The provision applies to proceedings commenced after the date of enactment.

d. Award of litigation costs permitted in declaratory judgment proceedings (sec. 13334 of the bill and sec. 7430 of the code)

Present Law

Section 7430(b)(3) denies any reimbursement for attorney's fees in all declaratory judgment actions, except those actions related to the revocation of an organization's qualification under section 501(c)(3) (relating to tax-exempt status).

Reasons for Change

It is appropriate to treat declaratory judgment proceedings similar to other tax proceedings, with respect to eligibility for attorney's fees.

Explanation of Provision

The bill eliminates the present-law restrictions on awarding attorney's fees in all declaratory judgment proceedings.

Effective Date

The provision applies to proceedings commenced after the date of enactment.

8. Modification to recovery of civil damages for unauthorized collection actions

a. Increase in limit on recovery of civil damages for unauthorized collection actions (sec. 13336 of the bill and sec. 7433 of the code)

Present Law

A taxpayer may sue the United States for up to $100,000 of damages caused by an officer or employee of the IRS who recklessly or intentionally disregards provisions of the Internal Revenue Code or the Treasury regulations promulgated thereunder in connection with the collection of Federal tax with respect to the taxpayer.

Reasons for Change

The committee believes that the cap for damages caused by IRS employees should be raised.

Explanation of Provision

The bill increases the cap from $100,000 to $1 million.

Effective Date

The provision applies to unauthorized collection actions by IRS employees that occur after the date of enactment.

b. Court discretion to reduce award for litigation costs for failure to exhaust administrative remedies (sec. 13337 of the bill and sec. 7433 of the code)

Present Law

A taxpayer suing the United States for civil damages for unauthorized collection activities must exhaust administrative remedies to be eligible for an award.

Reasons for Change

There may be circumstances in which it is inappropriate to require a taxpayer to exhaust administrative remedies.

Explanation of Provision

The bill permits (but does not require) a court to reduce an award if the taxpayer has not exhausted administrative remedies.

Effective Date

The provision is effective for proceedings commenced after the date of enactment.

9. Modification to penalty for failure to collect and pay over tax

a. Preliminary notice requirement (sec. 13341 of the bill and sec. 6672 of the code)

Present Law

Under section 6672, a "responsible person" is subject to a penalty equal to the amount of trust fund taxes that are not collected or paid to the government on a timely basis. An individual the IRS has identified as a responsible person is permitted an administrative appeal on the question of responsibility.

Reasons for Change

Some employees may not be fully aware of their personal liability under section 6672 for the failure to pay over trust fund taxes. The committee believes that IRS could make additional efforts to assist the public in understanding its responsibilities.

Explanation of Provision

The bill requires the IRS to issue a notice to an individual the IRS had determined to be a responsible person with respect to unpaid trust fund taxes at least 60 days prior to issuing a notice and demand for the penalty. The statute of limitations shall not expire before the date 90 days after the date on which the notice was mailed. The provision does not apply if the Secretary finds that the collection of the penalty is in jeopardy.

Effective Date

The provision applies to assessments made after June 30, 1996.

b. Disclosure of certain information where more than one person subject to penalty (sec. 13342 of the bill and sec. 6103 of the code)

Present Law

The IRS may not disclose to a responsible person the IRS's efforts to collect unpaid trust fund taxes from other responsible persons, who may also be liable for the same tax liability.

Reasons for Change

The committee believes that it is appropriate to permit the IRS to disclose to a responsible person whether the IRS is imposing the penalty on any other responsible person, and whether the IRS has been successful in collecting the penalty against such a person.

Explanation of Provision

The bill requires the IRS, if requested in writing by a person considered by the IRS to be a responsible person, to disclose in writing to that person the name of any other person the IRS has determined to be a responsible person with respect to the tax liability. The IRS is required to disclose in writing whether it has attempted to collect this penalty from other responsible persons, the general nature of those collection activities, and the amount (if any) collected. Failure by the IRS to follow this provision does not absolve any individual for any liability for this penalty.

Effective Date

The provision is effective on the date of enactment.

c. Right of contribution from multiple responsible parties (sec. 13343 of the bill and sec. 6672 of the code)

Present Law

A responsible person may seek to recover part of the amount which he has paid to the IRS from other individuals who also may have the obligations of a responsible person but who have not yet contributed their proportionate share of their liability under section 6672. Taxpayers must pursue such claims for contribution under state law (to the extent state law permits such claims). The variations in state law sometimes make it difficult or impossible to press successful suits in State courts to force a contribution from other responsible persons.

Reasons for Change

The IRS may collect this penalty from a responsible person from whom it can collect most easily, rather than from the person with the greatest culpability for the failure. It would accordingly promote fairness in the administration of the tax laws to establish a right of contribution among multiple responsible parties.

Explanation of Provision

If more than one person is liable for this penalty, each person who paid the penalty is entitled to recover from other persons who are liable for the penalty an amount equal to the excess of the amount paid by such person over such person's proportionate share of the penalty. This proceeding is a Federal cause of action and must be entirely separate from any proceeding involving IRS's collection of the penalty from any responsible party (including a proceeding in which the United States files a counterclaim or third-party complaint for collection of the penalty).

Effective Date

The provision applies to penalties assessed after the date of enactment.

d. Board members of tax-exempt organizations (sec. 13344 of the bill and sec. 6672 of the code)

Present Law

Under section 6672, "responsible persons" of tax-exempt organizations are subject to a penalty equal to the amount of trust fund taxes that are not collected and paid to the government on a timely basis.

Reasons for Change

Individuals who serve on the boards of tax-exempt organizations, on a voluntary or honorary basis, are often concerned that they will be held liable for unpaid taxes of the organization as a responsible person, even though their service may be strictly voluntary in nature, and they may not be involved in the day-to-day operations and financial decisions of the organization. The committee believes that the IRS has not made adequate efforts to clarify the rules applicable to tax-exempt organizations.

Explanation of Provision

The bill clarifies that the section 6672 responsible person penalty is not to be imposed on volunteer, unpaid members of any board of trustees or directors of a tax-exempt organization to the extent such members are solely serving in an honorary capacity, do not participate in the day-to-day or financial activities of the organization, and do not have actual knowledge of the failure. The provision cannot operate in such a way as to eliminate all responsible persons from responsibility.

The bill requires the IRS to develop materials to better inform board members of tax-exempt organizations (including voluntary or honorary members) that they may be treated as responsible persons. The IRS is required to make such materials routinely available to tax-exempt organizations. The bill also requires the IRS to clarify its instructions to IRS employees on application of the responsible person penalty with regard to honorary or volunteer members of boards of trustees or directors of tax-exempt organizations.

Effective Date

The provision is effective on the date of enactment.

10. Modifications of rules relating to summonses

a. Enrolled agents included as third-party recordkeepers (sec. 13346 of the bill and sec. 7609 of the code)

Present Law

Section 7609 contains special procedures that the IRS must follow before it issues a third-party summons. A third-party summons is a summons issued to a third-party recordkeeper compelling him to provide information with respect to the taxpayer. An example of this would be a summons served on a stock brokerage house to provide data on the securities trading of the taxpayer-client.

If a third-party summons is served on a third-party recordkeeper listed in section 7609(a)(3), then the taxpayer must receive notice of the summons and have an opportunity to challenge the summons in court. Otherwise the taxpayer has no statutory right to receive notice of the summons and accordingly he will not have the opportunity to challenge it in court.

Section 7609(a)(3) lists attorneys and accountants as third-party recordkeepers, but it does not list "enrolled agents", who are authorized to practice before the IRS.

Reasons for Change

Because enrolled agents are authorized to practice before the IRS in a similar manner to attorneys and accountants, they should be accorded the same status as third-party recordkeepers as are attorneys and accountants.

Explanation of Provision

The bill includes enrolled agents as third-party recordkeepers.

Effective Date

The provision applies to summonses issued after the date of enactment.

b. Safeguards relating to designated summonses; annual report to Congress on designated summonses (secs. 13347 and 13348 of the bill and sec. 6503 of the code)

Present Law

The period for assessment of additional tax with respect to most tax returns, corporate or otherwise, is 3 years. The IRS and the taxpayer can together agree to extend the period, either for a specified period of time or indefinitely. The taxpayer may terminate an indefinite agreement to extend the period by providing notice to the IRS.

During an audit, the IRS may informally request that the taxpayer provide additional information necessary to arrive at a fair and accurate audit adjustment, if any adjustment is warranted. Not all taxpayers cooperate by providing the requested information on a timely basis. In some cases the IRS seeks information by issuing an administrative summons. Such a summons will not be judicially enforced unless the government (as a practical matter, the Department of Justice) seeks and obtains an order for enforcement in Federal court. In addition, a taxpayer may petition the court to quash an administrative summons where this is permitted by statute.[10]

In certain cases, the running of the assessment period is suspended during the period when the parties are in court to obtain or avoid judicial enforcement of an administrative summons. Such a suspension is provided in the case of litigation over a third-party summons (sec. 7609(e)) or litigation over a summons regarding the examination of a related party transaction. Such a suspension can also occur with respect to a corporate tax return if a summons is issued at least 60 days before the day on which the assessment period (as extended) is scheduled to expire. In this case, suspension is only permitted if the summons clearly states that it is a "designated summons" for this purpose. Only one summons may be treated as a designated summons for purposes of any one tax return. The limitations period is suspended during the judicial enforcement period of the designated summons and of any other sum-

[10] Petitions to quash are permitted, for example, in connection with the examination of certain related party transactions under section 6038A(e)(4), and in the case of certain third-party summonses under section 7609(b)(2).

mons relating to the same tax return that is issued within 30 days after the designated summons is issued.

Under current internal procedures of the IRS, no designated summons is issued unless first reviewed by the Office of Chief Counsel to the IRS, including review by an IRS deputy regional counsel for the region in which the examination of the corporation's return is being conducted.

Reasons for Change

The committee recognizes that issuance of a designated summons is a serious step in the examination of a tax return, given the fact that litigation over the summons would suspend the running of the period for assessing additional tax against the taxpayer under audit. The committee believes that, in recognition of the seriousness of such a step, the IRS should be required to institute additional procedures to ensure high-level IRS review before any such summons is issued. The committee also believes that it is important to place some restrictions on the taxpayers to whom IRS can issue a designated summons.

Explanation of Provision

The bill requires that issuance of any designated summons with respect to a corporation's tax return must be preceded by review of such issuance by the regional counsel, Office of Chief Counsel to the IRS, for the region in which the examination of the corporation's return is being conducted.

The bill also limits the use of a designated summons to corporations (or to any other person to whom the corporation has transferred records) that are being examined as part of the Coordinated Examination Program [CEP] or its successor. CEP audits cover about 1,600 of the largest corporate taxpayers. If a corporation moves between CEP and non-CEP audit categories, only the tax years covered by the CEP may be the subject of a designated summons. The bill does not affect code section 6038A(e)(1), which relates to a U.S. reporting corporation that acts merely as the agent of the foreign related party by receiving summonses on behalf of the foreign party.

The bill also requires that the Treasury report annually to the Congress on the number of designated summonses issued in the preceding 12 months.

Effective Date

The provision applies to summonses issued after date of enactment.

11. Relief from retroactive application of Treasury Department regulations (sec. 13351 of the bill and sec. 7805 of the code)

Present Law

Under section 7805(b), Treasury may prescribe the extent (if any) to which regulations shall be applied without retroactive effect.

Reasons for Change

The committee believes that it is generally inappropriate for Treasury to issue retroactive regulations.

Explanation of Provision

The bill provides that temporary and proposed regulations must have an effective date no earlier than the date of publication in the Federal Register or the date on which any notice substantially describing the expected contents of such regulation is issued to the public. Any regulations filed or issued within 12 months of the enactment of the statutory provision to which the regulation relates may be issued with retroactive effect. This general prohibition on retroactive regulations may be superseded by a legislative grant authorizing the Treasury to prescribe the effective date with respect to a statutory provision. The Treasury may issue retroactive temporary or proposed regulations to prevent abuse. The Treasury also may issue retroactive temporary, proposed, or final regulations to correct a procedural defect in the issuance of a regulation. Taxpayers may elect to apply a temporary or proposed regulation retroactively from the date of publication of the regulation. Final regulations may take effect from the date of publication of the temporary or proposed regulation to which they relate. The provision does not apply to any regulation relating to internal Treasury Department policies, practices, or procedures. Present law with respect to rulings is unchanged.

Effective Date

The provision applies with respect to regulations that relate to statutory provisions enacted on or after the date of enactment.

12. Miscellaneous provisions

a. Report on pilot program for appeal of enforcement actions (sec. 13356 of the bill)

Present Law

A taxpayer who disagrees with an IRS collection action generally can only appeal to successively higher levels of management in the Collection Division. However, certain cases involving the 6672 penalty, offers-in-compromise, and employment tax issues may be appealed to the Appeals Division.

Reasons for Change

The IRS recently conducted a pilot program to evaluate the merits of allowing an independent appeal, by the taxpayer, to the Appeals Division of enforcement actions (including lien, levy, and seizure actions).

Explanation of Provision

The bill requires the Secretary to report to the tax-writing committees on the effectiveness of the pilot program, together with any recommendations he may deem advisable.

Effective Date

The report is due by March 1, 1996.

b. Phone numbers of person providing payee statement required to be shown on such statement (sec. 13357 of the bill and secs. 6041, 6041A, 6042, 6044, 6045, 6049, 6050B, 6050H, 6050I, 6050J, 6050K and 6050N of the code)

Present Law

Information returns must contain the name and address of the payor.

Reasons for Change

Taxpayers often need to contact payors issuing information returns in order to resolve questions about the accuracy of the information provided to the IRS. Currently, payors are only required to provide their names and addresses on information returns. As a result, taxpayers may have difficulty in contacting the payor and resolving questions quickly.

Explanation of Provision

The bill requires that information returns contain the name, address, and phone number of the information contact of the person required to make the information return. A payor may, for example, provide the phone number of the department with the relevant information. It is intended that the telephone number provide direct access to individuals with immediate resources to resolve a taxpayer's questions in an expeditious manner.

Effective Date

The provision applies to statements required to be furnished after December 31, 1996 (determined without regard to any extension).

c. Required notice to taxpayers of certain payments (sec. 13358 of the bill)

Present Law

If the IRS receives a payment without sufficient information to properly credit it to a taxpayer's account, the IRS may attempt to contact the taxpayer. If contact cannot be made, the IRS places the payment in an unidentified remittance file.

Reasons for Change

If the IRS cannot associate a taxpayer's payment with a balance due, the IRS generally deposits the money and may not inform the taxpayer of the overpayment. For example, a check that is separated from a balance-due income tax return, which is subsequently lost, may not get credited to that taxpayer's account.

Explanation of Provision

The bill requires the IRS to make reasonable efforts to notify, within 60 days, those taxpayers who have made payments which the IRS cannot associate with the taxpayer.

Effective Date

The provision is effective on the date of enactment.

d. Unauthorized enticement of information disclosure (sec. 13359 of the bill and new sec. 7435 of the code)

Present Law

No statutory disincentive applies to IRS employees who entice a tax professional to disclose information about clients in exchange for the favorable treatment of the taxes of the professional.

Reasons for Change

The committee believes that it is improper for IRS employees to entice tax professionals into breaching their fiduciary responsibilities to their clients in exchange for favorable treatment on their own returns.

Explanation of Provision

If any officer or employee of the United States intentionally compromises the determination or collection of any tax due from an attorney, certified public accountant, or enrolled agent representing a taxpayer in exchange for information conveyed by the taxpayer to the attorney, certified public accountant or enrolled agent for purposes of obtaining advice concerning the taxpayer's tax liability, the taxpayer may bring a civil action for damages against the United States in a district court of the United States. Upon a finding of liability, damages shall equal the lesser of $500,000 or the sum of first, actual economic damages sustained by the taxpayer as a proximate result of the information disclosure and second, the costs of the action. These remedies shall not apply to information conveyed to an attorney, certified public accountant or enrolled agent for the purpose of perpetrating a fraud or crime.

Effective Date

The provision applies to actions taken after the date of enactment.

e. Annual reminders to taxpayers with outstanding delinquent accounts (sec. 13360 of the bill and new sec. 7524 of the code)

Present Law

There is no statutory requirement in the code that the IRS send annual reminders to persons who have outstanding tax liabilities.

Reasons for Change

Numerous taxpayers become delinquent in paying their tax liability. The delinquencies may occur because the person did not make enough payments through payroll withholding or quarterly estimated payments or because of an adjustment following an audit.

The IRS generally pursues larger tax deficiencies first, and then it pursues small deficiencies. Because of the limited amount of IRS resources to work collection cases, cases with smaller deficiencies may not be addressed for years. In the meantime, the taxpayer may come to believe that the apparent lack of IRS collection activity means that it has abandoned its claim against the taxpayer. The taxpayer may be surprised when the IRS resumes collection action years later, when the 10-year statute of limitations on collections is close to expiring.

Explanation of Provision

The bill requires the IRS to send taxpayers an annual reminder of their outstanding tax liabilities. The fact that a taxpayer did not receive a timely, annual reminder notice does not affect the tax liability.

Effective Date

The provision requires the IRS to send annual reminder notices beginning in 1996.

f. Five-year extension of authority for undercover operations (sec. 13361 of the bill and sec. 7608 of the code)

Present Law

The Anti-Drug Abuse Act of 1988 exempted IRS undercover operations from the otherwise applicable statutory restrictions controlling the use of government funds (which generally provide that all receipts be deposited in the general fund of the Treasury and all expenses be paid out of appropriated funds). In general, the exemption permits the IRS to churn the income earned by an undercover operation to pay additional expenses incurred in the undercover operation. The IRS is required to conduct a detailed financial audit of large undercover operations in which the IRS is churning funds and to provide an annual audit report to the Congress on all such large undercover operations. The exemption originally expired on December 31, 1989, and was extended by the Comprehensive Crime Control Act of 1990 to December 31, 1991. The IRS has not had the authority to churn funds from its undercover operations since 1991.

Reasons for Change

Many other law enforcement agencies have churning authority. It is appropriate for IRS to have this authority as well.

Explanation of Provision

The bill reinstates the IRS's offset authority under section 7608(c) from the date of enactment until January 1, 2001. The bill amends the IRS annual reporting requirement under section 7608(c)(4)(B) to require the provision of the following data: First, the date the operation was initiated; second, the date offsetting was approved; third, the total current expenditures and the amount and use of proceeds of the operation; fourth, a detailed description of the undercover operation projected to generate proceeds, including the potential violation being investigated, and whether the operation is being conducted under grand jury auspices; and fifth, the results of the operation to date, including the results of criminal proceedings.

Effective Date

The provision is effective on the date of enactment.

g. Disclosure of returns on cash transactions (sec. 13362 of the bill and sec. 6103 of the code)

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than 5 years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the IRS to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

Under section 6050I, any person who receives more than $10,000 in cash in one transaction (or two or more related transactions) in the course of a trade or business generally must file an information return (form 8300) with the IRS specifying the name, address, and taxpayer identification number of the person from whom the cash was received and the amount of cash received.

The Anti-Drug Abuse Act of 1988 provided a special rule permitting the IRS to disclose these information returns to other Federal agencies for the purpose of administering Federal criminal statutes. The special rule originally was to expire after November 18, 1990, and was extended by the Comprehensive Crime Control Act of 1990 to November 18, 1992.

Reasons for Change

Information filed on form 8300 is very similar to information filed on Currency Transaction Reports [CTRs] under the Bank Secrecy Act. Both types of information reports should be subject to the same disclosure rules.

Explanation of Provision

The bill permanently extends the special rule for disclosing form 8300 information. Moreover, the bill permits disclosures not only to Federal agencies but also to State, local and foreign agencies and for civil, criminal and regulatory purposes (i.e., generally in the same manner as CTR's filed by financial institutions under the Bank Secrecy Act.) Disclosure, however, is not permitted to any such agency for purposes of tax administration. The bill also first, extends the dissemination policies and guidelines under section 6103 to people having access to form 8300 information, and second, applies section 6103 sanctions to persons having access to form 8300 information that disclose this information without proper authorization.

Effective Date

The provision is effective on the date of enactment.

h. Disclosure of returns and return information to designee of taxpayer (sec. 13363 of the bill and sec. 6103 of the code)

Present Law

Under present law, the IRS is authorized to disclose the return of any taxpayer, or return information pertaining to a taxpayer, to such person(s) as the taxpayer has designated in a written request.

Reasons for Change

The IRS' move to a paperless system depends on the ease and functionality of electronic communication systems, e.g., telephones, facsimile machines, computers, communications networks, etc.

Explanation of Provision

The bill deletes the word "written" from the requirement that "written consent" from the taxpayer is necessary for the disclosure of taxpayer information to a designated third party. Allowing the IRS to adopt alternatives to the written request requirement will expedite such changes and facilitate the development and implementation of Tax System Modernization projects. It is anticipated that the IRS will continue to utilize its regulatory authority to impose reasonable restrictions on the form in which a request is made, and that the IRS will in no event accept an unconfirmed verbal request.

Effective Date

The provision is effective on the date of enactment.

i. Report on netting of interest on overpayments and liabilities (sec. 13364 of the bill)

Present Law

If any portion of a tax is satisfied through the crediting of an overpayment of tax, no interest is imposed on that portion of the tax for any period during which, if the credit had not been made, interest would have been allowable.

The Tax Reform Act of 1986 first implemented an interest rate differential. The underpayment rate was set 1 percent higher than the overpayment rate. The conference report to the Tax Reform Act of 1986 stated:

> [t]o the extent a portion of tax due is satisfied by a credit of an overpayment, no interest is imposed on that portion of the tax. Consequently, if an underpayment of $1,000 occurs in year 1, and an overpayment of $1,000 occurs in year 2, no interest is imposed in year 2 because of the rule of section 6601(f). The IRS can at present net many of these offsetting overpayments and underpayments. Nevertheless, the IRS will require a transition period during which to coordinate differential interest rates * * * [t]he Secretary of the Treasury may prescribe regulations providing for netting of tax underpayments and overpayments through the period ending 3 years after the date of enactment of the bill. By that date, the IRS should have implemented the most comprehensive netting procedures that are consistent with sound administrative practice.

The Omnibus Budget Reconciliation Act of 1990 increased the underpayment rate on certain large corporate underpayments to 3 percent higher than the overpayment rate. The conference report stated:

> Under present law, the Secretary has the authority to credit the amount of any overpayment against any liability under the code * * * to the extent a portion of tax due is satisfied by a credit of an overpayment, no interest is imposed on that portion of the tax * * * The Secretary should implement the most comprehensive crediting procedures under section 6402 that are consistent with sound administrative practice.

The General Agreement on Tariffs and Trade [GATT] reduced the overpayment rate on certain corporate tax refunds. The legislative history of the GATT legislation stated that:

> The Secretary of the Treasury should implement the most comprehensive crediting procedures under section 6402 that are consistent with sound administrative practice, and should do so as rapidly as is practicable.

Reasons for Change

The committee believes that it is important for the committee to understand in detail how the IRS has implemented netting procedures to date.

Explanation of Provision

The bill requires the Secretary of the Treasury to conduct a study of the manner in which the IRS has implemented the netting of interest on overpayments and underpayments and the policy and administrative implications of global netting. The Treasury is required to hold a public hearing to receive comments from any interested party prior to submitting the report of its study to the tax writing committees.

Effective Date

The report is due 6 months after the date of enactment.

j. Credit for certain expenses incurred in connection with TCMP audits (sec. 13365 of the bill and new sec. 6428 of the code)

Present Law

The IRS has announced that it will soon begin taxpayer compliance measurement program [TCMP] audits of returns filed for taxable year 1994. The IRS plans to audit a stratified random sample consisting of approximately 150,000 returns. The data collected in TCMP audits is used by the IRS for several purposes: measuring the level of compliance with Federal tax laws; estimating the tax gap; developing criteria for objectively selecting returns for audit; allocating the IRS's audit resources; analyzing specific compliance issues; and developing legislative proposals designed to improve taxpayer compliance.

Under present law, any expenses a taxpayer incurs in connection with the determination, collection or refund of any tax are deductible under either section 162 or sections 212(3). However, there is no tax credit for expenses incurred in connection with TCMP audits.

Reasons for Change

The committee is concerned about the burden that TCMP audits may place on taxpayers whose returns are selected for audit. The committee believes it is appropriate to provide individuals subject to TCMP audits a tax credit for the expenses they incur in being audited, and to require the IRS to take other steps to reduce the burden on taxpayers selected for participation.

Explanation of Provision

The bill provides a refundable tax credit to individuals (not including estates, trusts, partnerships, or S corporations) for up to $3,000 of expenses otherwise deductible under either section 162 or section 212(3) incurred in connection with a TCMP audit of the taxpayer for taxable year 1994. In some circumstances, such as where a taxpayer has a net operating loss carryback, adjustments may also be made to an earlier tax return of the taxpayer as a consequence of the TCMP audit of the taxpayer for taxable year 1994. Expenses incurred with respect to this type of adjustment on an earlier return would also be eligible for the credit, because they are incurred in connection with the TCMP audit of the taxpayer for taxable year 1994. The $3,000 credit is the total available with respect to an audit, regardless of whether the expenses are incurred in 2 (or more) years. The credit is in lieu of a deduction with respect to these expenses.

The committee is concerned about the burdens TCMP audits may impose on taxpayers. In light of this, the IRS must provide participants with a full explanation of the TCMP program, their right to appeal any adjustments made to their tax liability as a result of the audit, and the eligibility of individuals for the tax credit for audit expenses and the eligibility of business taxpayers for a full deduction of all appropriate expenses.

The committee also directs the IRS to review existing guidelines for auditors to assure that "financial status" audit techniques are used only in cases where there is an indication that the taxpayer has underreported his or her income. At the discretion of the Secretary, IRS may establish a process that will insure that individual taxpayers who do not file a business schedule will be selected only once in their lifetime for a TCMP audit.

Effective Date

The provision is effective with respect to amounts paid or incurred after December 31, 1994, in taxable years ending after that date. The credit is allowable with respect to the taxable year in which the expenses are incurred.

k. Expenses of detection of underpayments and fraud (sec. 13366 of the bill and sec. 7623 of the code)

Present Law

The Secretary may, pursuant to regulations, pay rewards for information leading to the detection and punishment of violations of the Internal Revenue laws.

Reasons for Change

The committee believes that improvements should be made to this program.

Explanation of Provision

The bill clarifies that rewards may be paid for information relating to civil violations, as well as criminal violations. The bill also provides that the rewards are to be paid out of the proceeds of amounts (other than interest) collected by reason of the information provided. The bill also requires an annual report on the rewards program.

Effective Date

The provision is effective 6 months after the date of enactment.

SUBTITLE D. ADDITIONAL TECHNICAL CORRECTIONS

1. Technical correction to the Technical and Miscellaneous Revenue Act of 1988—reporting of real estate transactions (sec. 13401 of the bill and sec. 6045(e)(3) of the code)

Present Law

It is unlawful for any real estate reporting person to charge separately any customer for complying with the information reporting requirements with respect to real estate transactions.

Explanation of Provision

The bill clarifies that real estate reporting persons may take into account the cost of complying with the reporting requirements of code section 6045 in establishing charges for their services, so long as a separately listed charge for such costs is not made.

Effective Date

The provision is effective on November 11, 1988 (as if originally enacted as part of the amendment to the code relating to separate charges).

2. Technical correction to the Tax Reform Act of 1986—clarification of denial of deductions for stock redemption expenses (sec. 13402 of the bill and sec. 162(k)(2) of the code)

Present Law

Section 162(k), added by the Tax Reform Act of 1986, denies a deduction for any amount paid or incurred by a corporation in connection with the redemption of its stock. An exception is provided for any deduction allowable under section 163 (relating to interest). The Internal Revenue Service has taken the position that costs properly allocable to a borrowing the interest on which is deductible under the exception may not be amortized over the period of the loan, due to section 162(k). Different courts have reached differing conclusions when taxpayers have litigated the question.[11]

Explanation of Provision

The bill clarifies that amounts properly allocable to indebtedness on which interest is deductible and properly amortized over the term of that indebtedness are not subject to the provision of section 162(k) denying a deduction for any amount paid or incurred by a corporation in connection with the redemption of its stock.

In addition, the bill clarifies that the rules of section 162(k) apply to any acquisition of its stock by a corporation or by a party that has a relationship to the corporation described in section 465(b)(3)(C) (which applies a more than 10-percent relationship test in certain cases).

[11] See, e.g., *Fort Howard Corp.* v. *Commissioner*, 103 T.C. 345 (1994) upholding the IRS position; compare *United States* v. *Kroy (Europe) Limited*, 27 F.3d 367 (9th Cir. 1994) (to the contrary).

Thus, for example, it is clarified that the denial of a deduction applies to any reacquisition (i.e., any transaction that is in effect an acquisition of previously outstanding stock) regardless of whether the transaction is treated as a redemption for purposes of subchapter C of the code, regardless of whether it is treated for tax purposes as a sale of the stock or as a dividend, and regardless of whether the transaction is a reorganization or other transaction.

Apart from the clarification relating to amounts properly allocable to indebtedness, it is not intended that application of the 1986 act deduction denial to any amount or transaction be limited under the bill.

Effective Dates

The provision clarifying that amounts properly allocable to indebtedness and amortized over the term of that indebtedness are not subject to the denial under section 162(k), is effective as if included in the Tax Reform Act of 1986.

The other clarifications apply to amounts paid or incurred after September 13, 1995. No inference is intended that any amounts described in these other clarifications are deductible under present law.

3. Technical correction to the Omnibus Budget Reconciliation Act of 1990—Clarification of depreciation class for certain energy property (sec. 13403 of the bill and sec. 168(e)(3) of the code)

Present Law

Section 168(e)(3)(B)(vi)(I) provides that "solar and wind energy property" is 5-year property for purposes of the Modified Accelerated Cost Recovery System [MACRS]. "Solar and wind energy property" is defined by a cross-reference to section 48(a)(3)(A). Section 48(a)(3) contains flush language that provides that "energy property" does not include any public utility property. It is unclear whether this language applies to section 48(a)(3)(A) to deny the characterization of solar and wind energy property that is also public utility property as 5-year property.

Explanation of Provision

The bill clarifies that solar or wind energy property that is also public utility property qualifies as 5-year MACRS property.

Effective Date

The provision is effective as if included in the Omnibus Budget Reconciliation Act of 1990.

4. Technical correction to the Deficit Reduction Act of 1984—Cross reference relating to limitations on benefits and contributions (sec. 13404 of the bill and sec. 404(j)(1) of the code)

Present Law

Section 404(j)(1) requires the application of the limits on contributions and benefits under section 415 in determining deductions under certain listed paragraphs of section 404(a). Included in this list is paragraph (10) which no longer exists.

Section 713(d)(4)(A) of the Deficit Reduction Act of 1984 [DEFRA] removed the prior section 404(a)(9), which referred to plans benefiting self-employed individuals, and redesignated section 404(a)(10) as section 404(a)(9). However, this cross reference in section 404(j)(1) was not changed.

Explanation of Provision

Section 404(j)(1) is amended to refer to section 404(a)(9) instead of section 404(a)(10).

Effective Date

The provision is effective as if included in DEFRA.

5. Treatment of certain veterans' reemployment rights (sec. 13405 of the bill and new sec. 414(u) of the code)

Present Law

Under the Uniformed Services Employment and Reemployment Rights Act of 1994 [USERRA], Public Law No. 103–353, 38 U.S.C. §§ 4301, ff., which revised and restated the Federal law protecting veterans' reemployment rights, an employee who leaves a civilian job for qualified military service generally is entitled to be reemployed by the civilian employer if the individual returns to employment within a specified time period. In addition to reemployment rights, a returning veteran also is entitled to the restoration of certain pension, profit sharing and similar benefits that would have accrued, but for the employee's absence due to the qualified military service.

USERRA generally provides that for a reemployed veteran service in the uniformed services is considered service with the employer for retirement plan benefit accrual purposes, and the employer that reemploys the returning veteran is liable for funding any resulting obligation. USERRA also provides that the reemployed veteran is entitled to any accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals only to the extent the reemployed veteran makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the reemployed veteran would have been permitted or required to contribute had the person remained continuously employed by the employer throughout the period of uniformed service. Under USERRA, any such payment to the plan must be made during the period beginning with the date of reemployment and whose duration is three times the reemployed veteran's period of uniform service, not to exceed 5 years.

Under the Internal Revenue Code, overall limits are provided on contributions and benefits under certain retirement plans. For example, the maximum amount of elective deferrals that can be made by an individual into a qualified cash or deferred arrangement in any taxable year is limited to $9,240 for 1995 (sec. 402(g)). Annual additions with respect to each participant under a qualified defined contribution plan generally are limited to the lesser of $30,000 (for 1995) or 25 percent of compensation (sec. 415(c)). Annual deferrals with respect to each participant under an eligible deferred compensation plan (sec. 457) generally are limited to the lesser of $7,500 or 33⅓ percent of includable compensation. There is no provision under present law that permits contributions or deferrals to exceed these and other annual limits in the case of contributions with respect to a reemployed veteran.

Other requirements for which there is no special provision for contributions with respect to a reemployed veteran include the limit on deductible contributions and the qualified plan nondiscrimination, coverage, minimum participation, and top-heavy rules.

Explanation of Provision

The bill provides special rules in the case of certain contributions ("make-up contributions") with respect to a reemployed veteran that are required or authorized under USERRA. The bill applies to contributions made by an employer or employee to an individual account plan or to contributions made by an employee to a defined benefit pension plan that provides for employee contributions.

Under the bill, if any make-up contribution is made by an employer or employee with respect to a reemployed veteran, then such contribution is not subject to the generally applicable plan contribution limits (i.e., secs. 402(g), 402(h), 403(b), 408, 415, or 457) or the limit on deductible contributions (i.e., secs. 404(a) or 404(h)) as applied with respect to the year in which the contribution is made. In addition, the make-up contribution is not taken into account in applying the plan contribution or deductible contribution limits to any other contribution made during the year. However, the amount of any make-up contribution cannot exceed the aggregate amount of contributions that would have been permitted under the plan contribution and deductible contribution limits had the individual continued to be employed by the employer during the period of uniformed service.

The bill also provides that a plan under which a make-up contribution is made on account of a reemployed veteran is not treated as failing to meet the qualified plan nondiscrimination, coverage, minimum participation, and top heavy rules (i.e., secs. 401(a)(4), 401(a)(26), 401(k)(3), 401(m), 403(b)(12), 408(k)(3), 408(k)(6), 410(b), or 416) by reason of the making of such contribution. Consequently, for purposes of applying the tests associated with these rules, make-up contributions will not be taken into account.

Under the bill, a special rule applies in the case of make-up contributions of salary reduction, employer matching, and after-tax employee amounts. A plan that provides for elective deferrals or employee contributions is treated as meeting the requirements of USERRA if the employer permits reemployed veterans to make additional elective deferrals or employee contributions under the plan during the period which begins on the date of reemployment and has the same length as the lesser of first, the period of the individual's absence due to uniformed service multiplied by three or second, 5 years. The amount of the additional elective deferrals or employee contributions cannot exceed the amount of elective deferrals or employee contributions that the individual would have been permitted to make under the plan and in accordance with the plan contribution limits described above had the individual continued to be employed by the employer during the period of uniformed service and received compensation at the same rate as received from the employer immediately before such service.

The employer is required to match any additional elective deferrals or employee contributions at the same rate that would have been required had the deferrals or contributions actually been made during the period of uniformed service. Additional elective deferrals, employer matching contributions, and employee contributions are treated as make-up contributions for purposes of the rule exempting such contributions from qualified plan nondiscrimination, coverage, minimum participation, and top heavy rules as described above.

The bill clarifies that USERRA does not require first, any earnings to be credited to an employee with respect to any contribution before such contribution is actually made or second, any make-up allocation of any forfeiture that occurred during the period of uniformed service.

The bill also provides that the plan loan and plan qualification rules will not be violated merely because a plan suspends the repayment of a plan loan during the period of uniformed service.

The bill also defines compensation to be used for purposes of determining make-up contributions and would conform the rules contained in the code with certain rights of reemployed veterans contained in USERRA pertaining to employee benefit plans.

Effective Date

The provision is effective as of December 12, 1994, the effective date of the benefits-related provisions of USERRA.

SUBTITLE E. TAX INFORMATION SHARING: EXTEND ACCESS TO TAX INFORMATION FOR THE DEPARTMENT OF VETERANS AFFAIRS (SEC. 13501 OF THE BILL AND SEC. 6103 OF THE CODE)

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than 5 years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the Internal Revenue Service [IRS] to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

Among the disclosures permitted under the code is disclosure to the Department of Veterans Affairs [DVA] of self-employment tax information and certain tax information supplied to the Internal Revenue Service and Social Security Administration by third parties. Disclosure is permitted to assist DVA in determining eligibility for, and establishing correct benefit amounts under, certain of its needs-based pension, health care, and other programs (sec.

6103(1)(7)(D)(viii)). The income tax returns filed by the veterans themselves are not disclosed to DVA.

The DVA is required to comply with the safeguards currently contained in the code and in section 1137(c) of the Social Security Act (governing the use of disclosed tax information). These safeguards include independent verification of tax data, notification to the individual concerned, and the opportunity to contest agency findings based on such information.

The DVA disclosure provision is scheduled to expire after September 30, 1998.

Reasons for Change

The committee believes that it is appropriate to extend the authority to disclose tax information to DVA to assist DVA in determining eligibility for and establishing the correct benefits amounts under certain DVA programs.

Explanation of Provision

The bill permanently extends the authority to disclose tax information to the DVA.

Effective Date

The provision is effective on the date of enactment.

SUBTITLE F. REVENUE INCREASES: CORPORATE AND OTHER TAX REFORMS

1. Reform the tax treatment of certain corporate stock redemptions (sec. 13601 of the bill and sec. 1059 of the code)

Present Law

A corporate shareholder generally can deduct at least 70 percent of a dividend received from another corporation. This dividends received deduction is 80 percent if the corporate shareholder owns at least 20 percent of the distributing corporation and generally 100 percent if the shareholder owns at least 80 percent of the distributing corporation.

Section 1059 of the code requires a corporate shareholder that receives an "extraordinary dividend" to reduce the basis of the stock with respect to which the dividend was paid by the nontaxed portion of the dividend. Whether a dividend is "extraordinary" is determined, among other things, by reference to the size of the dividend in relation to the adjusted basis of the shareholder's stock. Also, a dividend resulting from a non pro rata redemption or a partial liquidation is an extraordinary dividend. If the reduction in basis of stock exceeds the basis in the stock with respect to which an extraordinary dividend is paid, the excess is taxed as gain on the sale or disposition of such stock, but not until that time (sec. 1059(a)(2)).

In general, a distribution in redemption of stock is treated as a dividend, rather than as a sale of the stock, if it is essentially equivalent to a dividend (sec. 302). A redemption of the stock of a shareholder generally is essentially equivalent to a dividend if it does not result in a meaningful reduction in the shareholder's proportionate interest in the distributing corporation. Section 302(b) also contains several specific tests (e.g., a substantial reduction computation and a termination test) to identify redemptions that are not essentially equivalent to dividends. The determination whether a redemption is essentially equivalent to a dividend includes reference to the constructive ownership rules of section 318, including the option attribution rules of section 318(a)(4).

Reasons for Change

The committee is concerned that corporate taxpayers are attempting to dispose of stock of other corporations in transactions structured as redemptions, where the redeemed corporate shareholder apparently expects to take the position that the transaction qualifies for the dividends received deduction. Thus, the redeemed corporate shareholder attempts to exclude from income a substantial portion of the amount received. In some cases, it appears that the taxpayers' interpretations of the option attribution rules of section 318(a)(4) are important to the taxpayers' contentions that their interests in the distributing corporations are not meaningfully reduced.[12]

Even in the absence of options, the committee is concerned that the present law rules dealing with extraordinary dividends permit inappropriate deferral of gain recognition when the portion of the distribution that is excluded due to the dividends received deduction exceeds the basis of the stock with respect to which the extraordinary dividend is received.

Explanation of Provision

Under the bill, except as provided in regulations, a corporate shareholder will recognize gain immediately with respect to any redemption treated as a dividend (in whole or in part) when the nontaxed portion of the dividend exceeds the basis of the shares surrendered, if the redemption is treated as a dividend due to options being counted as stock ownership.[13]

In addition, the bill requires immediate gain recognition whenever the basis of stock with respect to which any extraordinary dividend was received is reduced below zero.

Reorganizations or other exchanges involving amounts that are treated as dividends under section 356(a)(2) of the code are treated as redemptions for purposes of applying the rules relating to redemptions under section 1059(e). For example, if a recapitalization or other transaction that involves a dividend under section 356 has the effect of a non pro rata redemption or is treated as a dividend

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[12] For example, it has been reported that Seagram Co. intends to take the position that the corporate dividends received deduction will eliminate tax on significant distributions received from DuPont Co. in a redemption of almost all the DuPont stock held by Seagram, coupled with the issuance of certain rights to reacquire DuPont stock. (See, e.g., Landro and Shapiro, Hollywood Shuffle, *Wall St. Journal* pp. A1 and A11, April 7, 1995; Sloan, For Seagram and DuPont, a Tax Deal that No One Wants to Brandy About, *Wash. Post* p. D3, April 11, 1995; Sheppard, Can Seagram Bail Out of DuPont without Capital Gain Tax, *Tax Notes Today*, 95 TNT 75–4, April 10, 1995).

[13] Thus, for example, where a portion of such a distribution would not have been treated as a dividend due to insufficient earnings and profits, the rule applies to the portion treated as a dividend.

due to options being counted as stock, the rules of section 1059 apply. Redemptions of shares (or other extraordinary dividends on shares) held by a partnership will be subject to section 1059 to the extent there are corporate partners (e.g., appropriate adjustments to the basis of the shares held by the partnership and to the basis of the corporate partner's partnership interest will be required).

Finally, under continuing section 1059(g) of present law, the Treasury Department is authorized to issue regulations where necessary to carry out the purposes and prevent the avoidance of the bill.

Effective Date

The provision is generally effective for distributions after May 3, 1995, unless made pursuant to the terms of a written binding contract in effect on that date or a tender offer outstanding on that date. However, in applying the new gain recognition rules to any distribution that is not a partial liquidation, a non pro rata redemption, or a redemption that is treated as a dividend by reason of options, September 13, 1995 is substituted for May 3, 1995 in applying the transition rules.

No inference is intended regarding the tax treatment under present law of any transaction within the scope of the bill, including transactions utilizing options.

2. Require corporate tax shelter reporting (sec. 13602 of the bill and secs. 6111 and 6707(a) of the code)

Present Law

An organizer of a tax shelter is required to register the shelter with the Internal Revenue Service [IRS] (sec. 6111). If the principal organizer does not do so, the duty may fall upon any other participant in the organization of the shelter or any person participating in its sale or management. The shelter's identification number must be furnished to each investor who purchases or acquires an interest in the shelter. Failure to furnish this number to the tax shelter investors will subject the organizer to a $100 penalty for each such failure (sec. 6707(b)).

A penalty may be imposed against an organizer who fails without reasonable cause to timely register the shelter or who provides false or incomplete information with respect to it. The penalty is the greater of 1 percent of the aggregate amount invested in the shelter or $500. Any person claiming any tax benefit with respect to a shelter must report its registration number on her return. Failure to do so without reasonable cause will subject that person to a $250 penalty (sec. 6707(b)(2)).

A person who organizes or sells an interest in a tax shelter subject to the registration rule or in any other potentially abusive plan or arrangement must maintain a list of the investors (sec. 6112). A $50 penalty may be assessed for each name omitted from the list. The maximum penalty per year is $100,000 (sec. 6708).

For this purpose, a tax shelter is defined as any investment that meets two requirements. First, the investment must be first, required to be registered under a Federal or State law regulating securities, second, sold pursuant to an exemption from registration requiring the filing of a notice with a Federal or State agency regulating the offering or sale of securities, or third, a substantial investment. Second, it must be reasonable to infer that the ratio of deductions and 350 percent of credits to investment for any investor (i.e., the tax shelter ratio) may be greater than two to one as of the close of any of the first 5 years ending after the date on which the investment is offered for sale. An investment that meets these requirements will be considered a tax shelter regardless of whether it is marketed or customarily designated as a tax shelter (sec. 6111(c)(1)).

Reasons for Change

The committee believes that requiring registration of corporate tax shelters will result in the IRS obtaining useful information at an early date regarding various forms of tax shelter transactions engaged in by corporate participants. This will allow the IRS to make better informed judgments regarding the audit of corporate tax returns and to monitor whether legislation or regulations are necessary regarding the type of transaction being registered.

Explanation of Provision

The bill requires an organizer of a corporate tax shelter to register the shelter with the Secretary. Registration is required not later than the next business day after the day when the tax shelter is first offered to potential users. If an organizer is not a U.S. person, or if a required registration is not otherwise made, then any U.S. participant is required to register the shelter.

A corporate tax shelter is any investment, plan, arrangement or transaction first, that has a significant purpose of tax avoidance or evasion by a corporate participant, second, that is offered to any potential participant under conditions of confidentiality, and third, for which the tax shelter organizers may receive total fees in excess of $100,000.

A transaction is offered under conditions of confidentiality if: (a) an offeree (or any person acting on its behalf) has an understanding or agreement with or for the benefit of any promoter to restrict or limit its disclosure of the transaction or any significant tax features of the transaction; or (b) the promoter claims, knows or has reason to know (or the promoter causes another person to claim or otherwise knows or has reason to know that a party other than the potential offeree claims) that the transaction (or one or more aspects of its structure) is proprietary to the promoter or any party other than the offeree, or is otherwise protected from disclosure or use.

Registration will require the submission of information identifying and describing the tax shelter and the tax benefits of the tax shelter, as well as such other information as the Treasury Department may require.

Tax shelter promoters are required to maintain lists of those who have signed confidentiality agreements, or otherwise have been subjected to nondisclosure requirements, with respect to particular tax shelters. In addition, promoters must retain lists of those paying fees with respect to plans or arrangements that have previously been registered (even though the particular party may not have been subject to confidentiality restrictions).

All registrations will be treated as taxpayer information under the provisions of section 6103 and will therefore not be subject to any public disclosure.

The penalty for failing to timely register a corporate tax shelter is the greater of $10,000 or 50 percent of the fees payable to any promoter with respect to offerings prior to the date of late registration (i.e., this part of the penalty does not apply to fee payments with respect to offerings after late registration). A similar penalty is applicable to actual participants in any corporate tax shelter who were required to register the tax shelter but did not. With respect to participants, however, the 50-percent penalty is based only on fees paid by that participant. Intentional disregard of the requirement to register by either a promoter or a participant increases the 50-percent penalty to 75 percent of the applicable fees.

Effective Date

The provision applies to any tax shelter offered to potential participants after the date of enactment. No filings are due, however, until the Treasury Department issues guidance with respect to the filing requirements.

3. Denial of deduction for interest on loans with respect to company-owned insurance (sec. 13603 of the bill and sec. 264 of the code)

Present Law

No Federal income tax generally is imposed on a policyholder with respect to the earnings under a life insurance contract (''inside buildup'').[14] Further, an exclusion from Federal income tax is provided for amounts received under a life insurance contract paid by reason of the death of the insured (sec. 101(a)). The policyholder may borrow with respect to the life insurance contract without affecting these exclusions, subject to certain limitations.

The limitations on borrowing with respect to a life insurance contract under present law provide that no deduction is allowed for any interest paid or accrued on any indebtedness with respect to one or more life insurance policies owned by the taxpayer covering the life of any individual who first, is an officer or employee of, or second, is financially interested in, any trade or business carried on by the taxpayer to the extent that the aggregate amount of such debt with respect to policies covering the individual exceeds $50,000 (sec. 264(a)(4)). Further, no deduction is allowed for any

[14] This favorable tax treatment is available only if a life insurance contract meets certain requirements designed to limit the investment character of the contract (sec. 7702). Distributions from a life insurance contract (other than a modified endowment contract) that are made prior to the death of the insured generally are includible in income, to the extent that the amounts distributed exceed the taxpayer's basis in the contract; such distributions generally are treated first as a tax-free recovery of basis, and then as income (sec. 72(e)). In the case of a modified endowment contract, however, in general, distributions are treated as income first, loans are treated as distributions (i.e., income rather than basis recovery first), and an additional 10 percent tax is imposed on the income portion of distributions made before age 59½ and in certain other circumstances (secs. 72(e) and (v)). A modified endowment contract is a life insurance contract that does not meet a statutory ''7-pay'' test, i.e., generally is funded more rapidly than seven annual level premiums (sec. 7702A).

amount paid or accrued on debt incurred or continued to purchase or carry a life insurance, endowment or annuity contract pursuant to a plan of purchase that contemplates the systematic direct or indirect borrowing of part or all of the increases in the cash value of the contract.[15] An exception to the latter rule is provided, permitting deductibility of interest on bona fide debt that is part of such a plan, if no part of 4 of the annual premiums due during the first 7 years is paid by means of debt (the "4-out-of-7 rule") (sec. 264(c)(1)). Provided the transaction gives rise to debt for Federal income tax purposes, and provided the 4-out-of-7 rule is met,[16] a company may under present law borrow up to $50,000 per employee, officer, or financially interested person to purchase or carry a life insurance contract covering such a person, and is not precluded under section 264 from deducting the interest on the debt, even though the earnings inside the life insurance contract (inside buildup) are tax-free, and in fact the taxpayer has full use of the borrowed funds.

Reasons for Change

Considerable publicity has been focused on the magnitude of business borrowings with respect to life insurance and the scale of the tax benefits. In a recent article describing corporate-owned life insurance [COLI], it was stated, "COLIs can net big bucks. After 40 years, a COLI program that pays a $10,000 annual premium on each of 5,000 employees will produce about $450 million in death benefits and $300 million in tax benefits—netting the company $230 million."[17]

A company that sets up a COLI program typically purchases life insurance on the lives of its employees, in many cases thousands or tens of thousands of employees.[18] The company, not the employee or his family, is the beneficiary and receives proceeds on the employee's death. The company borrows against the value of the life insurance policies at an interest rate just above the rate at which inside buildup is credited under the policy. When deducting legitimate interest expense, the company shows a positive rate of return, because the after-tax interest it pays on the policy loan is less than the interest income being credited under the policy. In addition, tax-free death benefits that the company receives on the death of insured employees subsidize future years' premiums. Thus, the company is able to increase the value of its life insurance

[15] Additional limitations are imposed on the deductibility of interest with respect to single premium contracts (sec. 264(a)(2)), and on the deductibility of premiums paid on a life insurance contract covering the life of any officer or employee or person financially interested in a trade or business of the taxpayer when the taxpayer is directly or indirectly a beneficiary under the contract (sec. 264(a)(1)).

[16] Interest deductions are disallowed if any of the disallowance rules of section 264(a)(2)–(4) apply. The disallowance rule of section 264(a)(3) is not applicable if one of the exceptions of section 264(c), such as the 4-out-of-7 rule (sec. 264(c)(1)) is satisfied. In addition to the statutory disallowance rules of section 264, generally applicable principles of tax law apply.

[17] Solov, Diane, "Companies Profit By Insurance," *St. Paul Pioneer Press*, p. 2E, March 20, 1995.

[18] In some cases, State law provides that an employer continues to have an insurable interest in former employees even after the termination of their employment. Thus, this life insurance coverage may be continued after an employee terminates employment with an employer, creating an ever-increasing pool of lives.

contract while using funds borrowed under the insurance contract for other purposes.[19]

The committee believes that these types of transactions are an inappropriate use of the tax rules and achieve a result that was never contemplated by Congress. When the $50,000 limitation of present law was enacted, it was not anticipated that it would lead to a trend in the purchase of insurance products covering hundreds, thousands or even hundreds of thousands of employees of a business organization in order to maximize the tax arbitrage of deducting interest that is credited, tax-free, to the organization's own insurance contract.

In addition, the committee feels that it is not appropriate to permit a deduction for interest that is funding the increase in value of an asset of which the taxpayer is the ultimate beneficiary, as recipient of the proceeds upon the insured person's death. Interest paid by the taxpayer on a loan under a life insurance policy can be viewed as funding the inside buildup of the policy. The taxpayer is indirectly paying the interest to itself, through the increase in value of the policy of which the taxpayer is the beneficiary.

A general principle of accurate income measurement under an income tax system provides that expenses, such as interest, are not deducted from income if they are costs of accretions to wealth that are not included in income. The committee notes that numerous provisions of the tax law limit the deductibility of interest (as well as other expenses) relating to income that is not subject to tax. For example, interest incurred or continued to purchase or carry tax-exempt bonds is not deductible (sec. 265(a)(2)). As a further example, proration rules apply to insurance companies and financial institutions such as banks, designed to limit deductions funded by tax-exempt income (secs. 805(a)(4), 832(b)(5)(B), and 265(b)). Personal interest of individuals is not deductible (secs. 163(h)).[20] The absence of any such limitation under present law with respect to companies' borrowings under life insurance contracts creates a significant tax incentive under present law for companies to purchase life insurance contracts rather than investing in other assets. To be consistent with the principle of accurate income measurement, and to limit the economic distortion induced by present law, it is appropriate to limit the deductibility of interest on debt that relates to the earning of inside buildup.

Therefore, the provision disallows any deduction for interest on borrowing by businesses with respect to life insurance, endowment and annuity products covering persons in whom the taxpayer has an insurable interest, subject to a phase-in of the disallowance rule. The committee bill provides additional transition relief by permitting a 4-year spread of income resulting from the complete surren-

[19] Companies sometimes use the funds borrowed under the life insurance contracts for tax-advantaged funding of expenses such as retiree health benefits and nuclear decommissioning expenses, even though Congress has already provided special tax benefits specifically for funding these expenses.

[20] Congress has specifically permitted a deduction for home mortgage interest. In providing the home mortgage interest deduction, Congress noted that encouraging home ownership is an important policy goal. Borrowing under a life insurance policy, by contrast, conflicts with a policy goal to encourage the purchase of life insurance so that breadwinners provide after their death for their dependents, because the proceeds of life insurance are reduced by the amount of any loans outstanding at the time of the insured person's death. Interest on a loan to purchase a life insurance policy is nondeductible personal interest of an individual.

der, redemption or maturity of a policy or a refund of the consideration paid for a policy during 1996. The committee believes that, because a company can often control (through negotiation with the insurer) the interest rate on its policy loan, and because a policy can be surrendered (and the bill provides transition relief for surrenders), it is appropriate to apply the provision to interest paid or accrued after 1995.

Explanation of Provision

Under the bill, no deduction is allowed for interest paid or accrued on any indebtedness with respect to one or more life insurance policies or annuity or endowment contracts owned by the taxpayer covering any individual who is first, an officer or employee of, or second, financially interested in any trade or business carried on by the taxpayer, regardless of the aggregate amount of debt with respect to policies or contracts covering the individual.[21]

The provision is phased in over a 4-year period. Under the phase-in, a percentage of the interest deduction that would otherwise be disallowed is nevertheless allowed. The interest deduction allowed under the phase-in is for interest on debt incurred before September 18, 1995, with respect to a life insurance policy that was in effect on that date and that covers only the individual who was insured under that policy on that date ("qualified debt"). Any increase in the amount of debt under the policy on or after September 18, 1995 is treated as debt incurred on or after that date, and interest on the increased amount of debt is not allowed as a deduction under the phase-in. Only interest that would have been allowed as a deduction but for the amendment made by the bill is allowed under the phase-in. Thus, for example, debt that is otherwise qualified debt under a life insurance policy may not exceed the $50,000 limit of present-law section 264(a)(4), in order for interest on the debt to be allowed as a deduction under the phase-in. As another example, interest on debt that is disallowed as a deduction under present-law section 264(a)(3) because the 4-out-of-7 rule is not satisfied (and none of the other sec. 264(c) exceptions are satisfied) is not allowed under the phase-in.

During the 4-year phase-in period, the percentage of the deduction for interest that is disallowed for periods in 1996 is 20 percent; in 1997, 40 percent; in 1998, 60 percent; and in 1999, 80 percent. No deduction for interest is allowed under the phase-in after 1999. For taxpayers whose taxable year is not the calendar year, interest accrued in the portion of the taxable year that falls during any calendar year in the 4-calendar-year phase-in period is allowed in accordance with the percentage for that calendar year. Thus, for example, with respect to calendar years 1996 and 1997, a taxpayer with a fiscal year ending September 30 may deduct 80 percent of the interest on qualified debt that accrues during the period January 1, 1996, through September 30, 1996; 80 percent of the interest on such debt that accrues during the period October 1, 1996, through December 31, 1996; 60 percent of the interest on such debt

[21] The provision disallows the deduction for interest even if the deduction would not be disallowed under any other rule. Thus, for example, if a deduction would not be disallowed under section 264(a)(3) because the 4-out-of-7 rule is met, this provision nevertheless disallows the deduction.

that accrues during the period January 1, 1997, through September 30, 1997; and 60 percent of the interest on such debt that accrues during the period October 1, 1997, through December 31, 1997.

In promulgating regulations or other guidance under the provision, it is anticipated that the Treasury Department will take into account the purpose of the provision to eliminate the deduction for interest on borrowing by businesses with respect to life insurance, endowment and annuity products covering persons in whom the taxpayer has an insurable interest. For example, it is not intended that a taxpayer should be able to circumvent the purpose of the provision by borrowing under a life insurance, endowment or annuity contract with respect to a director who is not also an officer of the taxpayer.

Effective Date

The provision is effective with respect to interest paid or accrued after December 31, 1995 (subject to the phase-in). No inference is intended as to the treatment of interest paid or accrued under present law.

The provision does not apply to interest on debt with respect to contracts purchased on or before June 20, 1986 (thus continuing the effective date provision of the $50,000 limitation enacted in the 1986 Act).[22]

The bill provides a special 4-year income-spreading rule for certain amounts received under a contract, interest on debt under which was allowed as a deduction prior to December 31, 1995, but is disallowed under the provision. The 4-year income-spreading rule applies for any amount that is received under such a contract on the complete surrender, redemption or maturity of the contract in 1996, or in full discharge of the obligation under the contract that is in the nature of a refund of the consideration paid for the contract in 1996, to the extent the amount received is included in the taxpayer's income for the taxable year in which such event occurs. Under the special 4-year income-spreading rule, the amount included in income upon any such event in 1996 is includable ratably over the first four taxable years beginning with the taxable year the amount would otherwise have been includable. Utilization of this 4-year income-spreading rule does not cause interest paid or accrued prior to January 1, 1996, to be nondeductible solely by reason of failure to meet the 4-out-of-7 rule.

4. Phase out preferential tax deferral for certain large farm corporations required to use accrual accounting (sec. 13604 of the bill and sec. 447 of the code)

Present Law

A corporation (or a partnership with a corporate partner) engaged in the trade or business of farming must use an accrual method of accounting for such activities unless such corporation (or partnership), for each prior taxable year beginning after December 31, 1975, did not have gross receipts exceeding $1 million. If a farm corporation is required to change its method of accounting, the sec-

[22] This rule has the same meaning under the provision as its meaning under the 1986 Act.

tion 481 adjustment resulting from such change is included in gross income ratably over a 10-year period, beginning with the year of change. This rule does not apply to a family farm corporation.

A provision of the Revenue Act of 1987 (1987 Act) requires a family corporation (or a partnership with a family corporation as a partner) to use an accrual method of accounting for its farming business unless, for each prior taxable year beginning after December 31, 1985, such corporation (and any predecessor corporation) did not have gross receipts exceeding $25 million. A family corporation is one where 50 percent or more of the stock of the corporation is held by one (or in some limited cases, two or three) families.

A family farm corporation that must change to an accrual method of accounting as a result of the 1987 Act provision is to establish a suspense account in lieu of including the entire amount of the section 481 adjustment in gross income. The initial balance of the suspense account equals the lesser of first, the section 481 adjustment otherwise required for the year of change, or second, the section 481 adjustment computed as if the change in method of accounting had occurred as of the beginning of the taxable year preceding the year of change.

The amount of the suspense account is required to be included in gross income if the corporation ceases to be a family corporation. In addition, if the gross receipts of the corporation attributable to farming for any taxable year decline to an amount below the lesser of first, the gross receipts attributable to farming for the last taxable year for which an accrual method of accounting was not required, or second, the gross receipts attributable to farming for the most recent taxable year for which a portion of the suspense account was required to be included in income, a portion of the suspense account is required to be included in gross income.

Reasons for Change

The committee believes that an accrual method of accounting more accurately measures the economic income of a corporation than does the cash receipts and disbursements method and that changes from one method of accounting to another should be taken into account under section 481. However, the committee believes that it may be appropriate for a family farm corporation to retain the use of the cash method of accounting until such corporation reaches a certain size. At that time, the corporation should be subject to tax accounting rules to which other corporations are so subject. In addition, the committee believes that the present-law suspense account provision applicable to large family farm corporations may effectively provide an exclusion for, rather than a deferral of, amounts otherwise properly taken into account under section 481 upon the required change in the method of accounting for such corporations.

Explanation of Provision

The provision repeals the ability of a family farm corporation to establish a suspense account when it is required to change to an accrual method of accounting. Thus, under the provision, any family farm corporation required to change to an accrual method of accounting would restore the section 481 adjustment applicable to the change in gross income ratably over a 10-year period beginning with the year of change. In addition, any taxpayer with an existing suspense account is required to restore the account into income ratably over a 20-year period beginning in the first taxable year beginning after September 13, 1995, subject to the present-law requirements to restore such accounts more rapidly.

Effective Date

The provision is effective for taxable years ending after September 13, 1995.

5. Phased-in repeal of section 936 (sec. 13605 of the bill and sec. 936 of the code)

Present Law

Certain domestic corporations with business operations in the U.S. possessions (including, for this purpose, Puerto Rico and the U.S. Virgin Islands) may elect the section 936 credit which generally eliminates the U.S. tax on certain income related to their operations in the possessions. In contrast to the foreign tax credit, the possessions tax credit is a "tax sparing" credit. That is, the credit is granted whether or not the electing corporation pays income tax to the possession. Income exempt from U.S. tax under this provision falls into two broad categories: First, possession business income, which is derived from the active conduct of a trade or business within a U.S. possession or from the sale or exchange of substantially all of the assets that were used in such a trade or business; and second, qualified possession source investment income [QPSII], which is attributable to the investment in the possession or in certain Caribbean Basin countries of funds derived from the active conduct of a possession business.

In order to qualify for the section 936 credit for a taxable year, a domestic corporation must satisfy two possession income requirements (sec. 936(a)(2)). First, the corporation must derive at least 80 percent of its gross income for the 3-year period immediately preceding the close of the taxable year from sources within a possession. Second, the corporation must derive at least 75 percent of its gross income for that same period from the active conduct of a possession business.

The amount of the credit attributable to possession business income is subject to one of two limitations enacted by the Omnibus Budget Reconciliation Act of 1993 (1993 Act) (sec. 936(a)(4)). Under the economic activity limit, the amount of the credit with respect to such income cannot exceed the sum of a portion of the taxpayer's wage and fringe benefit expenses and depreciation allowances (plus, in certain cases, possession income taxes). In the alternative, the taxpayer may elect to apply a limit equal to the applicable percentage of the credit that would otherwise be allowable with respect to possession business income; the applicable percentage is phased down, beginning at 60 percent for 1994 and reaching 40 percent for 1998 and thereafter. The amount of the section 936 credit attributable to QPSII is not subject to these limitations.

Reasons for Change

The committee understands that the tax benefits provided by section 936 are enjoyed by only the relatively small number of U.S. corporations that operate in the possessions. Moreover, the committee is concerned about the tax cost of the benefits provided to these possession corporations that is borne by all U.S. taxpayers. In light of current budget constraints, the committee believes that the continuation of the tax exemption provided to corporations under section 936 is no longer appropriate. However, the committee believes that an appropriate transition period should be provided for corporations that have existing operations in the possessions.

Explanation of Provision

The bill generally repeals section 936 for taxable years beginning after December 31, 1995. However, a corporation that claimed the section 936 credit for any of its base period years (defined below) is eligible to continue to claim a section 936 credit for an additional 10 years under a special grandfather rule. A corporation that adds a substantial new line of business after September 13, 1995, ceases to be eligible to claim the section 936 credit under this grandfather rule beginning with the taxable year in which such new line of business is added. The committee intends that the corporation's eligibility to claim the section 936 credit under this rule not be terminated by reason of the addition of a new line of business by a related corporation. In determining whether a corporation has added a substantial new line of business, the committee intends that principles similar to those reflected in Treasury Reg. 1.7704–2(d) (relating to the transition rules for existing publicly traded partnerships) will apply. In this regard, the committee intends that the fact that a business which is added is assigned a different four-digit Industry Number Standard Industrial Classification Code (Industry SIC Code) than is assigned to an existing business of the corporation will not automatically cause the corporation to be considered to have added a new line of business. For example, a pharmaceutical corporation that begins manufacturing a new drug will not be considered to have added a new line of business. Moreover, a pharmaceutical corporation that begins to manufacture a complete product from the bulk active chemical through the finished dosage form, a process that may be assigned two separate four-digit Industry SIC Codes, will not be considered to have added a new line of business even though it was previously engaged in activities that involved only a portion of the entire manufacturing process from bulk chemicals to finished dosages.

The taxpayer's possession income that is eligible for the section 936 credit in each of the years during the grandfather period is subject to a cap computed based on the corporation's possession income for the base period years ("average adjusted base period possession income"). A taxpayer's possession income equals the sum of its possession business income and QPSII. Average adjusted base period possession income is the average of the adjusted possession income for each of the taxpayer's base period years. For the purpose of this computation, the taxpayer's possession income for a base period year is adjusted by an inflation factor that reflects inflation from such year to the year to which the cap is being applied. In addition, as a proxy for real growth in income throughout the base period, the inflation factor is increased by 5 percentage points compounded for each year from such year to the taxpayer's first taxable year beginning on or after September 13, 1995.

The taxpayer's base period years generally are 3 of the taxpayer's 5 most recent years ending before September 13, 1995, determined by disregarding the taxable years in which the adjusted possession incomes were highest and lowest. For purposes of this computation, only years in which the taxpayer had significant possession income are taken into account. A taxpayer is considered to have significant possession income for a taxable year if such income exceeds 2 percent of the taxpayer's possession income for the each of the 6 taxable years ending with the first taxable year ending on or after September 13, 1995. If the taxpayer has significant possession income for only 4 of the 5 most recent taxable years ending before September 13, 1995, the base period years are determined by disregarding the year in which the taxpayer's possession income was lowest. If the taxpayer has significant possession income for 3 years or fewer of such 5 years, then the base period years are all such years. If there is no year of such 5 taxable years in which the taxpayer has significant possession income, then the taxpayer may use as its base period its first taxable year ending on or after September 13, 1995; for this purpose, the amount of possession income taken into account is the annualized amount of such income for the portion of the year ended August 31, 1995, adjusted for inflation.

As an alternative, the taxpayer may elect to use its taxable year ending in 1992 as its base period (with the adjusted possession income for such year constituting its cap). If such an election is made, it would apply to all the years within the grandfather period unless revoked. Such an election must be made for all possession corporations that are members of an affiliated group.

If a taxpayer's possession income in a year during the grandfather period exceeds the cap, then the taxpayer's possession income for purposes of computing its section 936 credit for the year is an amount equal to the cap. The reduction in the taxpayer's possession income to the amount of the cap is allocated between the taxpayer's possession business income and QPSII for the year to which the cap is being applied based upon the relative amounts of possession business income and QPSII.

The taxpayer's section 936 credit for each year during the grandfather period continues to be subject to either the economic activity limit or the percentage phase-down imposed by the 1993 Act. The applicable limit is applied to the taxpayer's possession business income as reduced to reflect the application of the cap imposed under the bill. Under present law, an election to use the percentage phase-down was required to be made for the first taxable year after December 31, 1993, for which the taxpayer was a possession corporation. It is anticipated that some taxpayers that made such an election may prefer to apply the economic activity limit in light of the cap imposed under the bill; under present law, taxpayers are permitted to revoke the election to apply the percentage phase-down.

The cap computed under the bill is adjusted to reflect acquisitions (within the same line of business) and dispositions by a possession corporation prior to the close of the grandfather period. Under this rule, for example, a possession corporation that merges with another possession corporation that engages in the same line of business is subject to a cap that reflects the average adjusted possession income of both companies.

Effective Date

The provision is effective for taxable years beginning after December 31, 1995.

6. Corporate accounting—reform of income forecast method (sec. 13606 of the bill and sec. 167 of the code)

Present Law

In general

A taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through allowances for depreciation or amortization. Tangible property generally is depreciated under a modified Accelerated Cost Recovery System [MACRS] of section 168, which determines depreciation by applying specific recovery periods, placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property. Intangible property generally is amortized under section 197, which applies a 15-year recovery period and the straight-line method to the cost of applicable property.

Treatment of film, video tape, and similar property

MACRS does not apply to certain property, including any motion picture film, video tape, or sound recording or to other any property if the taxpayer elects to exclude such property from MACRS and the taxpayer applies a unit-of-production method or other method of depreciation not expressed in a term of years. Section 197 does not apply to certain intangible property, including property produced by the taxpayer or any interest in a film, sound recording, video tape, book, or similar property not acquired in transaction (or a series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof. Thus, the cost of a film, video tape, or similar property that is produced by the taxpayer or is acquired on a "stand-alone" basis by the taxpayer may not be recovered under either the MACRS depreciation provisions or under the section 197 amortization provisions. The cost of such property may be depreciated under section 167, which allows a depreciation deduction for the reasonable allowance for the exhaustion, wear and tear, or obsolescence of the property.

The "income forecast" method is an allowable method for calculating depreciation under section 167 for certain property. Under the income forecast method, the depreciation deduction for a taxable year for a property is determined by multiplying the cost of the property [23] (less estimated salvage value) by a fraction, the nu-

[23] In *Transamerica Corp.* v. *United States*, 999 F.2d 1362, (9th Cir. 1993), the Ninth Circuit overturned the District Court and held that for purposes of applying the income forecast method

merator of which is the income generated by the property during the year and the denominator of which is the total forecasted or estimated income to be derived from the property during its useful life. The income forecast method has been held to be applicable for computing depreciation deductions for motion picture films, television films and taped shows, books, patents, master sound recordings and video games.[24] The total forecasted or estimated income to be derived from a property is to be based on the conditions known to exist at the end of the period for which depreciation is claimed. This estimate can be revised upward or downward at the end of a subsequent taxable period based on additional information that becomes available after the last prior estimate. These revisions, however, do not affect the amount of depreciation claimed in a prior taxable year.

In the case of a film, income to be taken into account under the income forecast method means income from the film less the expense of distributing the film, including estimated income from foreign distribution or other exploitation of the film.[25] In the case of a motion picture released for theatrical exhibition, income does not include estimated income from future television exhibition of the film (unless an arrangement for domestic television exhibition has been entered into before the film has been depreciated to its reasonable salvage value). In the case of a series or a motion picture produced for television exhibition, income does not include estimated income from domestic syndication of the series or the film (unless an arrangement for syndication has been entered into before the series or film has been depreciated to its reasonable salvage value).[26] The Internal Revenue Service also has ruled that income does not include net merchandising revenue received from the exploitation of film characters.[27]

Reasons for Change

The committee believes that, in theory, the income forecast method is an appropriate method for matching the capitalized cost of certain property with the income produced by such property. However, the committee believes that the application of the income forecast method under present law does not meet the theoretical objective of the method. In addition, the committee recognizes that the reliance of the operation of the income forecast method upon estimated income may result in a mismatch between income and

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to a film, the "cost of a film" includes "participation" and "residual" payments (i.e., payments to producers, writers, directors, actors, guilds, and others based on a percentage of the profits from the film) even though these payments were contingent on the occurrence of future events. It is unclear to what extent, if any, the *Transamerica* decision applies to amounts incurred after the enactment of the economic performance rules of code section 461(h), as contained in the Deficit Reduction Act of 1984.

[24] See, e.g., Rev. Rul. 60–358, 1960–2 C.B. 68; Rev. Rul. 64–273, 1964–2 C.B. 62; Rev. Rul 79–285, 1979–2 C.B. 91; and Rev. Rul. 89–62, 1989–1 C.B. 78. Conversely, the courts have held that certain tangible personal property was not of a character to which the income forecast method was applicable. See, e.g., *ABC Rentals of San Antonio* v. *Comm.*, 68 TCM 1362 (1994) (consumer durable property subject to short-term, "rent-to-own" leases not eligible) and *Carland, Inc.* v. *Comm.*, 90 T.C. 505 (1988), aff'd on this issue, 909 F.2d 1101 (8th Cir 1990) (railroad rolling stock subject to a lease not eligible).

[25] Rev. Rul. 60–358, 1960–2 C.B. 68.

[26] Rev. Proc. 71–29, 1971–2 C.B. 568.

[27] Private letter ruling 7918012, January 24, 1979. Private letter rulings do no have precedential authority and may not be relied upon by any taxpayer other than the taxpayer receiving the ruling but are some indication of IRS administrative practice.

depreciation deductions when future income is over- or underestimated. The committee bill attempts to address these issues.

Explanation of Provision

The provision makes several amendments to the income forecast method of determining depreciation deductions.

First, the provision provides that income to be taken into account under the income forecast method includes all estimated income derived from the property. In the case of a film, television show, or similar property, such income includes, but would not necessarily be limited to, income from foreign and domestic theatrical, television, and other releases and syndications; video tape releases, sales, rentals, and syndications; and the exploitation of film or program characters, prints, scripts, and scores. Pursuant to a special rule, if a taxpayer produces a television series and initially does not anticipate syndicating the episodes from the series, the forecasted income for the episodes of the first 3 years of the series need not take into account any future syndication fees (unless the taxpayer reasonably anticipates syndicating such episodes during such period).

In addition, the cost of property subject to depreciation only includes amounts that satisfy the economic performance standard of section 461(h).[28] Any costs that are taken into account after the property is placed in service are treated as a separate piece of property to the extent first, such amounts are significant and are expected to give rise to a significant increase in the income from the property that was not included in the estimated income from the property, or second, such costs are incurred more than 10 years after the property was placed in service. Except as provided in regulations, any costs that are not recovered by the end of the 10th taxable year after the property was placed in service may be taken into account as depreciation in such year.

Finally, taxpayers that claim depreciation deductions under the income forecast method are required to pay (or would receive) interest based on the recalculation of deprecation under a "look-back" method.[29] The "look-back" method is applied in any "recomputation year" by first, comparing depreciation deductions that had been claimed in prior periods to depreciation deductions that would have been claimed had the taxpayer used actual, rather than estimated, total income from the property; second, determining the hypothetical overpayment or underpayment of tax based on this recalculated depreciation; and third, applying the overpayment rate of section 6621 of the code. Except as provided in regulations, a "recomputation year" is the 3d and 10th taxable year after the taxable year the property was placed in service unless the actual income from the property for each taxable year ending with or before the close of such years was within 10 percent of the estimated income from the property for such years. The Secretary of the Treasury has the authority to allow a taxpayer to delay the initial application of the look-back method where the taxpayer may be expected

[28] No inference is intended as to the proper application of section 461(h) to the income forecast method under present law.

[29] The "look-back" method of the provision resembles the look-back method applicable to long-term contracts accounted for under the percentage-of-completion method of present-law sec. 460.

to have significant income from the property after the third taxable year after the taxable year the property was placed in service (e.g., the Treasury Secretary may exercise such authority where the depreciable life of the property is expected to be longer than 3 years). In applying the look-back method, any cost that is taken into account after the property was placed in service may be taken into account by discounting (using the Federal mid-term rate determined under sec. 1274(d) as of the time the costs were taken into account) such cost to its value as of the date the property was placed in service. Property with an adjusted basis of $100,000 or less when the property was placed in service is not subject to the look-back method. The provision provides a simplified look-back method for pass-through entities.

Effective Date

The provision is effective for property placed in service after September 13, 1995, unless placed in service pursuant to a binding written contract in effect before such date and all times thereafter.

7. Transfers of excess pension assets (sec. 13607 of the bill and sec. 420 of the code)

Present Law

Defined benefit pension plans—protections for plan participants

A defined benefit pension plan is a type of employer-sponsored retirement plan that provides benefits to participants based upon a formula specified in the plan. The key feature of such a plan is that the benefit payable under the plan is based on the plan formula, not on the assets or investment experience of the plan.

Present law contains rules designed to ensure that benefits promised under defined benefit pension plans are paid to plan participants. Primary among these rules are minimum funding requirements that require the employer sponsoring the plan to make certain contributions to fund the plan. Underfunded plans are required to make additional minimum funding contributions. Within limits, employers may make, but are not required to make, contributions to defined benefit plans in excess of those required by the minimum funding rules.

As a backstop to the minimum funding rules, there is a Federal guarantee of pension benefits in the event a plan terminates with insufficient assets to pay plan benefits. Within limits, the pension benefits under defined benefit pension plans are guaranteed by the Pension Benefit Guaranty Corporation [PBGC].

Pension Benefit Guaranty Corporation

As initially enacted, as well as under present law, the minimum funding requirements permit an employer to fund plan participants' benefits over time. Because the funding rules recognize that pension obligations typically are long-term obligations, it is possible that a plan may be terminated at a time when plan assets are not sufficient to provide all the benefits earned by employees under the plan. In order to protect plan participants from losing significant retirement benefits in such circumstances, the PBGC was created in 1974 by the Employee Retirement Income Security Act [ERISA] to provide an insurance program for benefits under most defined benefit pension plans maintained by private employers.

The PBGC guarantees most vested normal retirement benefits (other than those than vest solely on account of plan termination), up to a maximum benefit of $2,574 for 1995. This dollar limit is indexed for inflation.

Under present law, a defined benefit pension plan with assets insufficient to provide for benefit liabilities can be terminated voluntarily by the employer only if the employer and members of the controlled group of the employer are in financial distress. The employer and controlled group members are liable to the PBGC for the full amount of unfunded plan liabilities (without regard to the net worth of the employer).

The PBGC is funded by assets in terminated plans, amounts recovered from employers who terminate underfunded plans, premiums paid with respect to covered plans, and investment earnings. All covered plans are required to pay a flat-rate premium of $19 per plan participant. In addition, plans with unfunded vested liabilities are subject to a variable rate premium equal to $9.00 per each $1,000 of unfunded vested benefits.

Minimum funding requirements

Present law imposes minimum funding requirements which are designed to provide at least a certain level of benefit security by requiring the employer sponsoring the plan to make certain minimum contributions to the plan.

Under the minimum funding rules, plans are funded in accordance with the actuarial funding method used by the plan, using reasonable actuarial assumptions (e.g., interest, mortality, and turnover assumptions), and taking into account experience gains and losses (that is, investment earnings and losses different from those assumed). There are a number of different actuarial funding methods that can be used under present law. Some methods accrue liabilities more rapidly than others. The rate at which liabilities accrue will also depend on the actuarial assumptions used by the plan.

Contributions required by the minimum funding rules are deductible by the employer (regardless of whether they would be deductible under normal income tax principles).

Special rules for underfunded plans

Additional funding requirements

The Pension Protection Act of 1987 added additional funding requirements for underfunded plans, required such plans to use an interest assumption within a particular corridor, and made other changes to the minimum funding rules and created the variable rate premium for underfunded plans. These rules were modified by the Retirement Protection Act of 1994, which was enacted as part of the Uruguay Round Agreements Act (commonly referred to as the implementing legislation for the General Agreement on Tariffs and Trade [GATT]).

Among other things, GATT generally increased the level of contributions required of underfunded plans and required that such plans use an interest rate within 90 and 109 percent of the 30-year Treasury rate [30] and mortality assumptions prescribed by the Secretary based on the 1993 Group Annuity Mortality [GAM] Table.

Under GATT, plans are generally subject to the additional funding requirements for underfunded plans if the plan has assets of less than 90 percent of current liability. In general, the additional contribution required under the special rules for underfunded plans increases as the level of underfunding increases.

Additional premiums

The Pension Protection Act of 1987 instituted a variable rate premium for plans with unfunded vested benefits.

The variable rate premium was initially set at $6 per $1,000 of unfunded vested benefits, with a cap on the total variable rate premium of $34. The premium was subsequently raised to $9.00 per $1,000 of unfunded vested benefits, up to a maximum additional premium of $53. Under the GATT legislation, the cap on the variable rate premium will be phased out.

Overfunded defined benefit plans

In general

As noted above, an employer is permitted to make contributions (within limits) in excess of the minimum funding requirements. Making contributions in excess of those required by the minimum funding requirements, as well as other factors, such as greater investment returns than assumed for funding purposes, can contribute to overfunding of pension plans.

Contributions to a plan are no longer deductible by the employer when plan assets reach a certain level, called the full-funding limit. A plan has reached the full-funding limit if the level of plan assets exceeds the lesser of first, 150 percent of current liability, or second, the accrued liability under the plan. In general terms, "current liability" is the amount of plan assets needed to fund all current accrued benefits under the plan to date (vested and nonvested). Current liability is determined using a statutorily prescribed interest rate assumption—the interest rate used must be between 90 and 110 percent of the 30-year Treasury rate. As under the general minimum funding rules, other actuarial assumptions used to calculate current liability are required to be reasonable. Accrued liability is generally the amount of assets required to fund the plan under the actuarial funding method used by the plan.

Transfers of excess assets

Under present law, defined benefit pension plan assets generally may not revert to an employer prior to the termination of the plan and the satisfaction of all plan liabilities. Any assets that revert to the employer upon such termination are includible in the gross income of the employer and subject to an excise tax. The rate of the excise tax generally is 20 percent, and is increased to 50 percent

[30] For 1995. The top end of the interest rate corridor phases down to 105 for 1999 and thereafter.

unless the employer maintains a replacement plan or makes certain benefit increases in connection with the plan termination. Upon plan termination, the accrued benefits of all plan participants are required to be 100-percent vested.

The Omnibus Budget Reconciliation Act of 1990 included a provision under which employers could transfer excess assets in an overfunded defined benefit pension plan to pay certain retiree health liabilities. Provided certain requirements are satisfied, such a transfer does not affect a plan's tax-qualified status and is not a prohibited transaction. Further, the assets transferred are not includible in the gross income of the employer and are not subject to the excise tax on reversions. The employer is not entitled to deduct retiree health benefits paid with transferred assets.

Such a transfer must satisfy certain requirements designed to protect the benefit security of plan participants. Under one of these requirements, the accrued retirement benefits of participants under the pension plan (including participants who separated from service during the 1-year period ending on the date of the transfer) must be nonforfeitable as if the plan terminated immediately before the transfer. In addition, only excess assets may be transferred. Excess assets are defined to be the excess of the value of plan assets over the greater of first, the lesser of (a) 150 percent of current liability or (b) the accrued liability under the plan, or second, 125 percent of current liability. The first part of this standard is the same as the maximum limit for making contributions to the plan for deduction purposes. As under that limit, the interest rate used in calculating current liability must be between 90 and 110 percent of the 30-year Treasury rate. The second part serves as insurance to make sure that there is a 25-percent-of-current-liability-asset cushion.

The provision permitting certain transfers of excess pension plan assets was originally adopted for a 5-year period, through 1995. As well as making changes to the minimum funding rules, GATT extended the excess asset transfer provision through the year 2000. The GATT legislation did not change the way in which excess assets are calculated.

Reasons for Change

The committee believes that the defined benefit pension plan system is a critical part of the retirement security of many Americans. Fundamental to the maintenance of that system is ensuring that defined benefit plans are adequately funded. Since the enactment of ERISA, the minimum funding rules have been improved to strengthen the funding of underfunded plans. In addition, the security of defined benefit pension plans depends on the willingness of the employer to make contributions in excess of those required by law. If employers are denied reasonable access to excess pension assets, they will be cautious in making contributions and unwilling to make contributions in excess of those required by law. It is that very cautious funding that creates a potential risk to plan participants and the PBGC.

In testimony before the Subcommittee on Private Retirement Plans of the Senate Committee on Finance on the Status of the Pension Benefit Guaranty Corporation in 1987, the then-Executive

Director of the PBGC stated: "* * * the long-term health of the PBGC depends upon the continued health of the great majority of plans, those that are now fully funded or better. It is particularly important to allow employers reasonable access to truly surplus plan assets after full provision has been made for benefits promised to participants. Measures that would forbid pension asset reversions or drastically limit the amount that employers could recover upon plan termination would make companies very cautious about their contributions. Thus, paradoxical as it may sound, allowing employers access to pension surpluses protects plan participant because it helps produce better funding."[31] The committee believes that what was true in 1987 is particularly true in 1995 because the Congress has enacted much greater safeguards to the pension benefit guaranty system than existed in 1987.

The GATT legislation negotiated between the Congress and President Clinton embodies the policy that, while it is necessary to increase minimum funding contributions to help reduce underfunding, sponsors of overfunded plans should not be penalized for doing more than the law requires provided benefit security is not threatened. The present-law transfer provision has been designed to provide employers access to excess plan assets and safeguard pension plan benefits. However, by restricting the use of excess assets, present law unfairly discriminates against employers that do not have substantial retiree health liabilities. The committee believes it appropriate to provide more employers access to excess pension plan assets by permitting the employer to make transfers of excess assets without regard to the use of the funds. In order to make such a transfer, the employer must comply with participant protection rules contained in present law. Thus, the present-law method of determining excess assets and the present-law vesting requirement are retained. Further, the transfer provision is not extended beyond the period provided by GATT.

The minimum funding rules, special rules for underfunded plans, and the variable rate premium will continue to operate to protect plan participants and the PBGC from the risks posed by underfunded plans. Modifying the transfer provision included in GATT will provide a financial incentive for more employers to make more than the minimum required contributions to their plans. The valuation date used to measure the amount of excess assets provides an additional safeguard because, under the provision adopted by the committee, the value of plan assets is the lesser of the value of plan assets as of January 1, 1995, or as of the most recent valuation date preceding the transfer. Thus, the value of plan assets cannot go up after January 1, 1995, but they can go down, thereby leaving a smaller pool of excess assets to be transferred to the employer.

The committee believes that, by imposing a smaller excise tax on the transfer of excess assets from an ongoing defined benefit plan, employers will have an incentive to continue to maintain, rather than terminate, such plans. In the long run, this may contribute to greater retirement income security. Further, permitting reason-

[31] Testimony of Dr. Kathleen Utgoff, Executive Director, Pension Benefit Guaranty Corporation Before the Subcommittee on Private Retirement Plans and Oversight of the Internal Revenue Service of the Senate Committee on Finance, May 18, 1987.

able access to excess pension assets for all employers with overfunded plans may encourage more employers to adopt and adequately fund defined benefit pension plans.

Explanation of Provision

The provision modifies the circumstances under which employers may transfer excess assets from a defined benefit plan. The provision permits a qualified transfer of excess assets from a defined benefit pension plan (other than a multiemployer plan) to the employer, without a limitation on the use of the excess assets. Amounts transferred are includible in the gross income of the employer and generally subject to a 6.5-percent excise tax. No excise tax applies in the case of transfers occurring before July 1, 1996. As under present law, a transfer under the provision does not affect the plan's qualified status and is not a prohibited transaction.

In order for the transfer to be qualified, the accrued retirement benefits of participants (including participants who separated from service during the 1-year period ending on the date of the transfer) under the pension plan must be nonforfeitable as if the plan terminated immediately before the transfer.

Excess assets are defined as under present law, and are determined as of whichever of the following dates excess assets are lower: First, January 1, 1995 (or, if January 1, 1995, is not a plan valuation date, as of the last plan valuation date preceding January 1, 1995), or second, the most recent plan valuation date preceding the transfer.

The provision does not apply to transfers in taxable years beginning after December 31, 2000.

Effective Date

The provision is effective January 1, 1995.

8. Modify exclusion of damages received on account of personal injury or sickness (sec. 13611 of the bill and sec. 104(a)(2) of the code)

Present Law

Under present law, gross income does not include any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injury or sickness (sec. 104(a)(2)).

The exclusion from gross income of damages received on account of personal injury or sickness specifically does not apply to punitive damages received in connection with a case not involving physical injury or physical sickness. Courts presently differ as to whether the exclusion applies to damages received in connection with a case involving a physical injury or physical sickness.

Courts have interpreted the exclusion from gross income of damages received on account of personal injury or sickness broadly in some cases to cover awards for personal injury that do not relate to a physical injury or physical sickness. For example, some courts have held that the exclusion applies to damages in cases involving certain forms of employment discrimination and injury to reputation where there is no physical injury or physical sickness. The damages received in these cases generally consist of back pay and other awards intended to compensate the claimant for lost wages or lost profits. The Supreme Court recently held that damages received based on a claim under the Age Discrimination in Employment Act could not be excluded from income.[32] In light of the Supreme Court decision, the Internal Revenue Service has suspended existing guidance on the tax treatment of damages received on account of other forms of employment discrimination.

Reasons for Change

Punitive damages are intended to punish the wrongdoer and do not compensate the claimant for lost wages or pain and suffering. Thus, they are a windfall to the taxpayer and appropriately should be included in taxable income. Further, including all punitive damages in taxable income provides a bright-line standard which avoids prospective litigation on the tax treatment of punitive damages received in connection with a case involving a physical injury or physical sickness.

Damages received on a claim not involving a physical injury or physical sickness are generally to compensate the claimant for lost profits or lost wages that would otherwise be included in taxable income. The confusion as to the tax treatment of damages received in cases not involving physical injury or physical sickness has led to substantial litigation, including two Supreme Court cases within the last 4 years. The taxation of damages received in cases not involving a physical injury or physical sickness should not depend on the type of claim made.

Explanation of Provisions

Treat all punitive damage income as taxable

The bill provides that the exclusion from gross income does not apply to any punitive damages received on account of personal injury or sickness whether or not related to a physical injury or physical sickness. The committee intends no inference as to the application of the exclusion to punitive damages received prior to the effective date of the bill in connection with a case involving a physical injury or physical sickness.

Include in income damage recoveries for nonphysical injuries

The bill provides that the exclusion from gross income only applies to damages received on account of a personal physical injury or physical sickness. If an action has its origin in a physical injury or physical sickness, then all damages (other than punitive damages) that flow therefrom are treated as payments received on account of physical injury or physical sickness whether or not the recipient of the damages is the injured party. For example, damages (other than punitive damages) received by an individual on account of a claim for loss of consortium due to the physical injury or physical sickness of such individual's spouse are excludable from gross income. In addition, damages (other than punitive damages) re-

[32] *Schleier* v. *Commissioner,* 115 S. Ct. 2159 (1995).

ceived on account of a claim of wrongful death continue to be excludable from taxable income as under present law.

The bill also specifically provides that emotional distress is not considered a physical injury or physical sickness. Thus, the exclusion from gross income does not apply to any damages received (other than for medical expenses as discussed below) based on a claim of employment discrimination or injury to reputation accompanied by a claim of emotional distress. Because all damages received on account of physical injury or physical sickness are excludable from gross income, the exclusion from gross income does apply to any damages received based on a claim of emotional distress that is attributable to a physical injury or physical sickness. In addition, the exclusion from gross income specifically does apply to the amount of damages received that is not in excess of the amount paid for medical care attributable to emotional distress.

Effective Date

The provisions generally are effective with respect to amounts received after December 31, 1995. The provisions do not apply to amounts received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995.

9. Require tax reporting for payments to attorneys (sec. 13612 of the bill and sec. 6045 of the code)

Present Law

Information reporting is required by persons engaged in a trade or business and making payments in the course of that trade or business of "rent, salaries, wages, * * * or other fixed or determinable gains, profits, and income" (code sec. 6041(a)). Treas. Reg. sec. 1.6041–1(d)(2) provides that attorney's fees are required to be reported if they are paid by a person in a trade or business in the course of a trade or business. Reporting is required to be done on form 1099–Misc. If, on the other hand, the payment is a gross amount and it is not known what portion is the attorney's fee, no reporting is required on any portion of the payment.

Reasons for Change

There have been recent reports of attorneys who have either failed to file income tax returns or failed to report all their income. The committee believes that it is important to require additional information reporting with respect to payments to attorneys to increase compliance by attorneys with the tax laws.

Explanation of Provision

The bill requires gross proceeds reporting on all payments to attorneys made by a trade or business in the course of that trade or business. It is anticipated that gross proceeds reporting would be required on form 1099–B (currently used by brokers to report gross proceeds). The only exception to this new reporting requirement is for any payments reported on either form 1099–Misc under section

6041 (reports of payment of income) or on form W–2 under section 6051 (payments of wages).

In addition, the present exception in the regulations exempting from reporting any payments made to corporations will not apply to payments made to attorneys. Treas. Reg. sec. 1.6041–3(c) exempts payments to corporations generally (although payments to most corporations providing medical services must be reported). Reporting is required under both code sections 6041 and 6045 (as proposed) for payments to corporations that provide legal services. The exception of Treas. Reg. sec. 1.6041–3(g) exempting from reporting payments of salaries or profits paid or distributed by a partnership to the individual partners will continue to apply to both sections (since these amounts are required to be reported on form K–1).

Effective Date

The provision is effective for payments made after December 31, 1995. Consequently, the first information reports will be filed with the IRS (and copies will be provided to recipients of the payments) in 1997, with respect to payments made in 1996.

10. Expatriation tax provisions (secs. 13616–13618 of the bill and secs. 877, 2107, 2501 and new sec. 6039F of the code) [33]

Present Law

Taxation of U.S. citizens, residents, and nonresidents

Individual income taxation

Income taxation of U.S. citizens and residents

In general

A U.S. citizen generally is subject to the U.S. individual income tax on his or her worldwide taxable income.[34] All income earned by a U.S. citizen, whether from sources inside or outside the United States, is taxable, whether or not the individual lives within the United States. A non-U.S. citizen who resides in the United States generally is taxed in the same manner as a U.S. citizen if the individual meets the definition of a "resident alien," described below.

The taxable income of a U.S. citizen or resident is equal to the taxpayer's total income less certain exclusions, exemptions, and deductions. The appropriate tax rates are then applied to a taxpayer's taxable income to determine his or her individual income tax liability. A taxpayer may reduce his or her income tax liability by any applicable tax credits. When an individual disposes of property, any gain or loss on the disposition is determined by reference to the taxpayer's cost basis in the property, regardless of whether the property was acquired during the period in which the taxpayer was a citizen or resident of the United States.

If a U.S. citizen or resident earns income from sources outside the United States, and that income is subject to foreign income

[33] These expatriation tax provisions were previously reported by the Committee on Ways and Means in H.R. 1812 (H. Rept. 104–145, June 16, 1995).

[34] The determination of who is a U.S. citizen for tax purposes, and when such citizenship is lost, is governed by the provisions of the Immigration and Nationality Act, 8 U.S.C. section 1401, et seq. See Treas. Reg. section 1.1–1(c).

taxes, the individual generally is permitted a foreign tax credit against his or her U.S. income tax liability to the extent of foreign income taxes paid on that income.[35] In addition, a U.S. citizen who lives and works in a foreign country generally is permitted to exclude up to $70,000 of annual compensation from being subject to U.S. income taxes, and is permitted an exclusion or deduction for certain housing expenses.[36]

Resident aliens

In general, a non-U.S. citizen is considered a resident of the United States if the individual first, has entered the United States as a lawful permanent U.S. resident (the "green card test"); or second, is present in the United States for 31 or more days during the current calendar year and has been present in the United States for a substantial period of time—183 or more days during a 3-year period weighted toward the present year (the "substantial presence test").[37]

If an individual is present in the United States for fewer than 183 days during the calendar year, and if the individual establishes that he or she has a closer connection with a foreign country than with the United States and has a tax home in that country for the year, the individual generally is not subject to U.S. tax as a resident on account of the substantial presence test. If an individual is present for as many as 183 days during a calendar year, this closer connections/tax home exception is not available. An alien who has an application pending to change his or her status to permanent resident or who has taken other steps to apply for status as a lawful permanent U.S. resident is not eligible for the closer connections/tax home exception.

For purposes of applying the substantial presence test, any days that an individual is present as an "exempt individual" are not counted. Exempt individuals include certain foreign government-related individuals, teachers, trainees, students, and professional athletes temporarily in the United States to compete in charitable sports events. In addition, the substantial presence test does not count days of presence of an individual who is physically unable to leave the United States because of a medical condition that arose while he or she was present in the United States, if the individual can establish to the satisfaction of the Secretary of the Treasury that he or she qualifies for this special medical exception.

In some circumstances, an individual who meets the definition of a U.S. resident (as described above) could also be defined as a resident of another country under the internal laws of that country. In order to avoid the double taxation of such individuals, most income tax treaties include a set of "tie-breaker" rules to determine the individual's country of residence for income tax purposes. In general, a dual resident is deemed to be a resident of the country in which

[35] See code sections 901–907.
[36] Section 911.
[37] The definitions of resident and nonresident aliens are set forth in code section 7701(b). The substantial presence test will compare 183 days to the sum of first, the days present during the current calendar year, second, one-third of the days present during the preceding calendar year, and third, one-sixth of the days present during the second preceding calendar year. Presence for an average of 122 days (or more) per year over the 3-year period would be sufficient to trigger the test.

such person has a permanent home. If the individual has a permanent home available in both countries, the individual's residence is deemed to be the country with which his or her personal and economic relations are closer, i.e., the "center of vital interests." If the country in which such individual has his or her center of vital interests cannot be determined, or if such individual does not have a permanent home available in either country, he or she is deemed to be a resident of the country in which he or she has an habitual abode. If the individual has an habitual abode in both countries or in neither of them, he or she is deemed to be a resident of the country of which he or she is a citizen. If each country considers the person to be its citizen or if he or she is a citizen of neither of them, the competent authorities of the countries are to settle the question of residence by mutual agreement.

Income taxation of nonresident aliens

Non-U.S. citizens who do not meet the definition of "resident aliens" are considered to be nonresident aliens for tax purposes. Nonresident aliens are subject to U.S. tax only to the extent their income is from U.S. sources or is effectively connected with the conduct of a trade or business within the United States. Bilateral income tax treaties may modify the U.S. taxation of a nonresident alien.

A nonresident alien is taxed at regular graduated rates on net profits derived from a U.S. business.[38] Nonresident aliens also are taxed at a flat rate of 30 percent on certain types of passive income derived from U.S. sources, although a lower treaty rate may be provided (e.g., dividends are frequently taxed at a reduced rate of 15 percent). Such passive income includes interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits and income. There is no U.S. tax imposed, however, on interest earned by nonresident aliens with respect to deposits with U.S. banks and certain types of portfolio debt investments.[39] Gains on the sale of stocks or securities issued by U.S. persons generally are not taxable to a nonresident alien because they are considered to be foreign source income.[40]

Nonresident aliens are subject to U.S. income taxation on any gain recognized on the disposition of an interest in U.S. real property.[41] Such gains generally are subject to tax at the same rates that apply to similar income received by U.S. persons. If a U.S. real property interest is acquired from a foreign person, the purchaser

[38] Section 871.

[39] See sections 871(h) and 871(i)(3).

[40] Section 865(a).

[41] Sections 897, 1445, 6039C, and 6652(f), known as the Foreign Investment in Real Property Tax Act [FIRPTA]. Under the FIRPTA provisions, tax is imposed on gains from the disposition of an interest (other than an interest solely as a creditor) in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the U.S. Virgin Islands. Also included in the definition of a U.S. real property interest is any interest (other than an interest solely as a creditor) in any domestic corporation unless the taxpayer establishes that the corporation was not a U.S. real property holding corporation [USRPHC] at any time during the 5-year period ending on the date of the disposition of the interest (sec. 897(c)(1)(A)(ii)). A USRPHC is any corporation, the fair market value of whose U.S. real property interests equals or exceeds 50 percent of the sum of the fair market values of first, its U.S. real property interests, second, its interests in foreign real property, plus third, any other of its assets which are used or held for use in a trade or business (sec. 897(c)(2)).

generally is required to withhold 10 percent of the amount realized (gross sales price). Alternatively, either party may request that the Internal Revenue Service [IRS] determine the transferor's maximum tax liability and issue a certificate prescribing a reduced amount of withholding (not to exceed the transferor's maximum tax liability).[42]

Estate and gift taxation

The United States imposes a gift tax on any transfer of property by gift made by a U.S. citizen or resident,[43] whether made directly or indirectly and whether made in trust or otherwise. Nonresident aliens are subject to the gift tax with respect to transfers of tangible real or personal property where the property is located in the United States at the time of the gift. No gift tax is imposed, however, on gifts made by nonresident aliens of intangible property having a situs within the United States (e.g., stocks and bonds).[44]

The United States also imposes an estate tax on the worldwide "gross estate" of any person who was a citizen or resident of the United States at the time of death, and on certain property belonging to a nonresident of the United States that is located in the United States at the time of death.[45]

Since 1976, the gift tax and the estate tax have been unified so that a single graduated rate schedule applies to cumulative taxable transfers made by a U.S. citizen or resident during his or her lifetime and at death. Under this rate schedule, the unified estate and gift tax rates begin at 18 percent on the first $10,000 in cumulative taxable transfers and reach 55 percent on cumulative taxable transfers over $3 million.[46] A unified credit of $192,800 is available with respect to taxable transfers by gift and at death. The unified credit effectively exempts a total of $600,000 in cumulative taxable transfers from the estate and gift tax.

Residency for purposes of estate and gift taxation is determined under different rules than those applicable for income tax purposes. In general, an individual is considered to be a resident of the United States for estate and gift tax purposes if the individual is "domiciled" in the United States. An individual is domiciled in the United States if the individual (a) is living in the United States and has the intention to remain in the United States indefinitely; or (b) has lived in the United States with such an intention and has not formed the intention to remain indefinitely in another country. In the case of a U.S. citizen who resided in a U.S. possession at the time of death, if the individual acquired U.S. citizenship solely on account of his birth or residence in a U.S. possession, that individual is not treated as a U.S. citizen or resident for estate tax purposes.[47]

In addition to the estate and gift taxes, a separate transfer tax is imposed on certain "generation-skipping" transfers.

[42] Section 1445.
[43] Section 2501.
[44] Section 2501(a)(2)
[45] Sections 2001, 2031, 2101. and 2103.
[46] Section 2001(c).
[47] Section 209.

Special tax rules with respect to the movement of persons and property into or out of the United States

Individuals who relinquish U.S. citizenship with a principal purpose of avoiding U.S. tax

An individual who relinquishes his or her U.S. citizenship with a principal purpose of avoiding U.S. taxes is subject to an alternative method of income taxation for 10 years after expatriation under section 877 of the code.[48] Under this provision, if the Treasury Department establishes that it is reasonable to believe that the expatriate's loss of U.S. citizenship would, but for the application of this provision, result in a substantial reduction in U.S. tax based on the expatriate's probable income for the taxable year, then the expatriate has the burden of proving that the loss of citizenship did not have as one of its principal purposes the avoidance of U.S. income, estate or gift taxes. Section 877 does *not* apply to resident aliens who terminate their U.S. residency.

The alternative method modifies the rules generally applicable to the taxation of nonresident aliens in two ways. First, the expatriate is subject to tax on his or her U.S. source income at the rates applicable to U.S. citizens rather than the rates applicable to other nonresident aliens. (Unlike U.S. citizens, however, individuals subject to section 877 are not taxed on any foreign source income.) Second, the scope of items treated as U.S. source income for section 877 purposes is broader than those items generally considered to be U.S. source income under the code. For example, gains on the sale of personal property located in the United States, and gains on the sale or exchange of stocks and securities issued by U.S. persons, generally are not considered to be U.S. source income under the code. However, if an individual is subject to the alternative taxing method of section 877, such gains are treated as U.S. source income with respect to that individual. The alternative method applies only if it results in a higher U.S. tax liability than would otherwise be determined if the individual were taxed as a nonresident alien.

Because section 877 alters the sourcing rules generally used to determine the country having primary taxing jurisdiction over certain items of income, there is an increased potential for such items to be subject to double taxation. For example, a former U.S. citizen subject to the section 877 rules may have capital gains derived from stock in a U.S. corporation. Under section 877, such gains are treated as U.S. source income, and are, therefore, subject to U.S. tax. Under the internal laws of the individual's new country of residence, however, that country may provide that all capital gains realized by a resident of that country are subject to taxation in that country, and thus the individual's gain from the sale of U.S. stock also would be taxable in his or her country of residence. If the individual's new country of residence has an income tax treaty with the

[48] Treasury regulations provide that an individual's citizenship status is governed by the provisions of the Immigration and Nationality Act, specifically referring to the "rules governing loss of citizenship [set forth in] sections 349 to 357, inclusive, of such act (8 U.S.C. 1481–1489)." Treas. Reg. sec 1.1–1(c). Under the Immigration and Nationality Act, an individual is generally considered to lose U.S. citizenship on the date that an expatriating act is committed. The present-law rules governing the loss of citizenship, and a description of the types of expatriating acts that lead to a loss of citizenship, are discussed more fully in Part II.A.2.a., below.

United States, the treaty may provide for the amelioration of this potential double tax.

Similar rules apply in the context of estate and gift taxation if the transferor relinquished U.S. citizenship with a principal purpose of avoiding U.S. taxes within the 10-year period ending on the date of the transfer. A special rule is applied to the estate tax treatment of any decedent who relinquished his or her U.S. citizenship within 10 years of death, if the decedent's loss of U.S. citizenship had as one of its principal purposes a tax avoidance motive.[49] Once the Secretary of the Treasury establishes a reasonable belief that the expatriate's loss of U.S. citizenship would result in a substantial reduction in estate, inheritance, legacy and succession taxes, the burden of proving that one of the principal purposes of the loss of U.S. citizenship was *not* avoidance of U.S. income or estate tax is on the executor of the decedent's estate.

In general, the estates of such individuals are taxed in accordance with the rules generally applicable to the estates of nonresident aliens (i.e., the gross estate includes all U.S.-situs property held by the decedent at death, is subject to U.S. estate tax at the rates generally applicable to the estates of U.S. citizens, and is allowed a unified credit of $13,000, as well as credits for State death taxes, gift taxes, and prior transfers). However, a special rule provides that the individual's gross estate also includes his or her prorata share of any U.S.-situs property held through a foreign corporation in which the decedent had a 10-percent or greater voting interest, provided that the decedent and related parties together owned more than 50 percent of the voting power of the corporation. Similarly, gifts of intangible property having a situs within the United States (e.g., stocks and bonds) made by a nonresident alien who relinquished his or her U.S. citizenship within the 10-year period ending on the date of transfer are subject to U.S. gift tax, if the loss of U.S. citizenship had as one of its principal purposes a tax avoidance motive.[50]

Aliens having a break in residency status

A special rule applies in the case of an individual who has been treated as a resident of the United States for at least 3 consecutive years, if the individual becomes a nonresident but regains residency status within a 3-year period.[51] In such cases, the individual is subject to U.S. tax for all intermediate years under the section 877 rules described above (i.e., the individual is taxed in the same manner as a U.S. citizen who renounced U.S. citizenship with a principal purpose of avoiding U.S. taxes). The special rule for a break in residency status applies regardless of the subjective intent of the individual.

Transfers to foreign corporations

Certain transfers of property by shareholders to a controlled corporation are generally tax-free if the persons transferring the property own at least 80 percent of the corporation after the transfer.[52]

[49] Section 2107.
[50] Section 2501(a)(3).
[51] Section 7701(b)(10).
[52] Section 351.

Also, in certain corporate reorganizations, including qualifying acquisitions and dispositions, shareholders of one corporation may exchange their stock or securities for stock or securities of another corporation that is a party to the reorganization without a taxable event except to the extent they receive cash or other property that is not permitted stock or securities. In these cases, a corporation may also transfer property to another corporation that is a party to the reorganization, without a taxable event except to the extent of certain nonpermitted consideration.[53] A liquidation of an 80-percent owned corporate subsidiary into its parent corporation is also generally tax-free.[54]

Under the rules applicable to these types of transfers, property transferred to a corporation retains its basis, to the extent the transfer was tax-free, so that any appreciation (i.e., built-in gain) will be subject to tax if the property is subsequently sold by the recipient corporation. Similarly, a shareholder who exchanges stock of one corporation for stock of another retains his or her original basis so that a subsequent sale of the acquired stock can produce a taxable gain.

Section 367 applies special rules, however, if property is transferred by a U.S. person to a foreign corporation in a transaction that would otherwise be tax-free under these provisions. These special rules are generally directed at situations where property is transferred to a foreign corporation, outside of the U.S. taxing jurisdiction, so that a subsequent sale by that corporation could escape U.S. tax notwithstanding the carryover basis of the asset. In some instances, such a transfer causes an immediate taxable event so that the generally applicable tax-free rules are overridden. In other instances, the taxpayer may escape immediate tax by entering a gain recognition agreement [GRA] obligating the taxpayer to pay tax if the property is disposed of within a specified time period after the transfer. The GRA rules generally require the taxpayer to agree to file an amended return for the year of the original transfer if the property is disposed of by the transferee (including payment of interest from the due date of the return for the year of the original transfer to the time the additional tax under the agreement is actually paid following the disposition).

Section 367 also imposes rules directed at situations where a U.S. person has an interest in a foreign corporation, such as a controlled foreign corporation [CFC] meeting specific U.S. shareholder ownership requirements, that could result in the U.S. person being taxed on its share of certain foreign corporate earnings. These rules are designed to prevent the avoidance of tax in circumstances where a reorganization or other nonrecognition transaction restructures the stock or asset ownership of the foreign corporation so that the technical requirements for imposition of U.S. tax on foreign earnings under the CFC or other rules are no longer met, so that there is potential for removing the earnings of the original CFC from current or future U.S. tax, or changing the character of the earnings for U.S. tax purposes (e.g., from dividend to capital gain).

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[53] Sections 368, 354, 356, and 361. (See also sec. 355.)

[54] Section 332.

The rules of section 367 do not generally apply unless there is a transfer by a U.S. person to a foreign corporation, or unless a foreign corporation of which a U.S. person is a shareholder engages in certain transactions. Because an individual who expatriates is no longer a U.S. person, section 367 has no effect on actions taken by such individuals after expatriation. The Treasury Department has considerable regulatory authority under section 367 to address situations that may result in U.S. tax avoidance. For example, section 367(b) provides that any of certain tax-free corporate transactions that do not involve a transfer of property from a U.S. person (described in section 367(a)(1)) can be recharacterized as taxable "to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes." The legislative history of this provision suggests that it was directed principally at situations involving avoidance of U.S. tax on foreign earnings and profits;[55] however the statutory language is quite broad and was provided in conjunction with the general rules taxing certain transfers by U.S. persons. Under the existing section 367 regulations and the relevant expatriation sections of the code, a U.S. person who expatriates, even for a principal purpose of avoiding U.S. tax, may subsequently engage in transactions that involve the transfer of property to a foreign corporation without any adverse consequences under section 367, since expatriation (even for a principal purpose of tax avoidance) is not an event covered by section 367 or the current regulations under that section. Similarly, a U.S. person who has expatriated is not be considered a U.S. shareholder for purposes of applying the rules that address restructurings of foreign corporations with U.S. shareholders. By engaging in such a transaction, a taxpayer that has expatriated could transfer assets that would otherwise generate income which would be subject to tax under section 877 into a foreign corporation, thus transforming the income into non-U.S. source income not subject to tax under section 877. For example, under section 877, if a principal purpose of tax avoidance existed, an expatriate would be taxed for 10 years on any sale of U.S. corporate stock. However, after expatriation, the person would no longer be a U.S. person for purposes of section 367, and thus could transfer U.S. corporate stock to a foreign corporation controlled by the expatriate under section 351 without any section 367 effect. The foreign corporation could then sell the U.S. corporate stock within the 10-year period, but the gain would not be subject to U.S. tax.

In addition, the IRS or Treasury might encounter difficulties enforcing a gain recognition agreement if a U.S. person who has entered into such an agreement to pay tax on a later disposition of an asset subject to the agreement and then expatriates. The GRA regulations contain provisions requiring security arrangements if a U.S. natural person who has entered an agreement dies (or if a U.S. entity goes out of existence) but these provisions do not apply if a U.S. natural person expatriates.[56]

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[55] See, e.g., H. Rept. No. 94–658, pp. 239–248 (94th Cong. 1st sess, 1975); S. Rept. No. 94–938, pp. 261–271 (94th Cong., 2d sess, 1976); H. Rept. No. 94–1515, p. 463 (94th Cong., 2d sess., 1976)

[56] See, e.g., Temp. Reg. section 1.367(a)–3T(g)(9) and (10), Notice 87–85, 1987–2 C.B.

Even if an individual is subject to the alternative taxing method of section 877 (because the person expatriated with a principal purpose of avoiding U.S. tax), section 877 does not impose a tax on foreign source income. Thus, such an individual could expatriate and subsequently transfer appreciated property to a foreign corporation or other entity beyond the U.S. taxing jurisdiction, without any U.S. tax being imposed on the appreciation under section 877.

Similar issues exist under section 1491 of the code. Section 1491 imposes a 35-percent tax on otherwise untaxed appreciation when appreciated property is transferred by a U.S. citizen or resident, or by a domestic corporation, partnership, estate or trust, to certain foreign entities in a transaction not covered by section 367. In some cases, taxpayers may elect to enter into a gain recognition agreement (rather than pay immediate tax) pursuant to section 1492.[57] As in the case of section 367, an individual who has expatriated is no longer a U.S. citizen and may also no longer be a U.S. resident, thus a transfer by such a person would be unaffected by section 1491.

Requirements for U.S. citizenship, immigration, and visas

U.S. citizenship

An individual may acquire U.S. citizenship in one of three ways: First, being born within the geographical boundaries of the United States; second, being born outside the United States to at least one U.S. citizen parent (as long as that parent had previously been a resident in the United States for a requisite period of time); or third, through the naturalization process. All U.S. citizens are required to pay U.S. income taxes on their worldwide income. The State Department estimates that there are approximately 3 million U.S. citizens living abroad, although thousands of these individuals may not even know that they are U.S. citizens.

A U.S. citizen may voluntarily give up his or her U.S. citizenship at any time by performing one of the following acts ("expatriating acts") with the intention of relinquishing U.S. nationality: First, becoming naturalized in another country; second, formally declaring allegiance to another country; third, serving in a foreign army; fourth, serving in certain types of foreign government employment; fifth, making a formal renunciation of nationality before a U.S. diplomatic or consular officer in a foreign country; sixth, making a formal renunciation of nationality in the United States during a time of war; or, seventh, committing an act of treason.[58] An individual who wishes to formally renounce citizenship (item five, above), must execute an Oath of Renunciation before a consular officer, and the individual's loss of citizenship is effective on the date the oath is executed. In all other cases, the loss of citizenship is effective on the date that the expatriating act is committed, even though the loss may not be documented until a later date. The State Department generally documents loss in such cases when the individual acknowledges to a consular officer that the act was taken with the requisite intent. In all cases, the consular officer abroad submits a certificate of loss of nationality [CLN] to the

[57] See, e.g., PLR 9103033.
[58] 8 U.S.C. section 1481.

State Department in Washington, DC for approval.[59] Upon approval, a copy of the CLN is issued to the affected individual. The date upon which the CLN is approved is not the effective date for loss of citizenship.

Before a CLN is issued, the State Department reviews the individual's files to confirm that: First, the individual was a U.S. citizen; second, an expatriating act has been committed; third, the act was undertaken voluntarily; and fourth, the individual had the intent of relinquishing citizenship when the expatriating act was committed. If the expatriating act involved an action of a foreign government (for example, if the individual was naturalized in a foreign country or joined a foreign army), the State Department will not issue a CLN until it has obtained an official statement from the foreign government confirming the expatriating act. If a CLN is not issued because the State Department does not believe that an expatriating act has occurred (for example, if the requisite intent appears to be lacking), the issue is likely to be resolved through litigation. Whenever the loss of U.S. nationality is put in issue, the burden of proof is on the person or party claiming that a loss of citizenship has occurred to establish, by a preponderance of the evidence, that the loss occurred.[60] Similarly, if a CLN has been issued, but the State Department later discovers that such issuance was improper (for example, because fraudulent documentation was submitted, or the requisite intent appears to be lacking), the State Department could initiate proceedings to revoke the CLN. If the recipient is unable to establish beyond a preponderance of the evidence that citizenship was lost on the date claimed, the CLN would be revoked. To the extent that the IRS believes a CLN was improperly issued, the IRS could present such evidence to the State Department and request that revocation proceedings be commenced. If it is determined that the individual has indeed committed an expatriating act, the date for loss of citizenship will be the date of the expatriating act.

A child under the age of 18 cannot lose U.S. citizenship by naturalizing in a foreign state or by taking an oath of allegiance to a foreign state. A child under 18 can, however, lose U.S. citizenship by serving in a foreign military or by formally renouncing citizenship, but such individuals may regain their citizenship by asserting a claim of citizenship before reaching the age of 18 years and 6 months.

A naturalized U.S. citizen can have his or her citizenship involuntarily revoked if a U.S. court determines that the certificate of naturalization was illegally procured, or was procured by concealment of a material fact or by willful misrepresentation (for example, if the individual concealed the fact that he served as a concentration camp guard during World War II).[61] In such cases, the individual's certificate of naturalization is canceled, effective as of the original date of the certificate; in other words, it is as if the individual were never a U.S. citizen at all.

[59] 8 U.S.C. section 1501.

[60] U.S.C. sec. 1481(b).

[61] See section 340(a) of the Immigration and Nationality Act, 8 U.S.C. section 1451(a). See also, *United States* v. *Demjanjuk*, 680 F.2d 32, *cert. denied*, 459 U.S. 1036 (1982).

U.S. immigration and visas

In general, a non-U.S. citizen who enters the United States is required to obtain a visa.[62] An immigrant visa (also known as a "green card") is issued to an individual who intends to relocate to the United States permanently. Various types of nonimmigrant visas are issued to individuals who come to the United States on a temporary basis and intend to return home after a certain period of time. The type of nonimmigrant visa issued to such individuals is dependent upon the purpose of the visit and its duration. An individual holding a nonimmigrant visa is prohibited from engaging in activities that are inconsistent with the purpose of the visa (for example, an individual holding a tourist visa is not permitted to obtain employment in the United States).

Foreign business people and investors often obtain "E" visas to come into the United States. Generally, an "E" visa is initially granted for a 1-year period, but it can be routinely extended for additional 2-year periods. There is no overall limit on the amount of time an individual may retain an "E" visa. There are two types of "E" visas: an "E–1" visa, for "treaty traders" and an "E–2" visa, for "treaty investors". To qualify for an "E–1" visa, an individual must be a national of a country that has a treaty of trade with the United States, and must be coming to the United States solely to engage in substantial trade principally between a U.S. entity and that company. Trade includes the import and export of goods or services. At least 50 percent of the foreign-based company must be owned by nationals of that country, and at least 50 percent of the shareholders must either live abroad, or have an "E–1" visa and live in the United States (thus, an individual holding a "green card" would not be counted). Over 50 percent of the individual's business must be between the United States and the foreign country. To qualify for an "E–2" visa, an individual (or a company of which he is an executive, manager, or essential employee) must be a national of a country that has a treaty investor agreement with the United States, and must be coming to the United States solely to develop and direct the operations of an enterprise in which he has invested, or is actively in the process of investing, a substantial amount of capital.

Relinquishment of green cards

There are several ways in which a green card can be relinquished. First, an individual who wishes to terminate his or her permanent residency may simply mail his or her green card back to the INS. Second, an individual may be involuntarily deported from the United States (through a judicial or administrative proceeding), and the green card must be relinquished at that time. Third, a green cardholder who leaves the United States and attempts to reenter more than a year later may have his or her green card taken away by the INS border examiner, although the individual may appeal to an immigration judge to have the green card re-

[62] Under the Visa Waiver Pilot Program, nationals of most European countries are not required to obtain a visa to enter the United States if they are coming as tourists and staying a maximum of 90 days. Also, citizens of Canada, Mexico, and certain islands in close proximity to the United States do not need visas to enter the United States, although other types of travel documents may be required.

instated. A green-card holder may permanently leave the United States without relinquishing his or her green card, although such individuals would continue to be taxed as U.S. residents.[63]

Reasons for Change

The committee has been informed that a small number of very wealthy individuals each year relinquish their U.S. citizenship for the purpose of avoiding U.S. income, estate, and gift tax. By so doing, such individuals may reduce their annual U.S. income tax liability and their eventual U.S. estate tax liability.

The committee recognizes that citizens of the United States clearly have a basic right under both U.S. and international law not only to leave the United States to live elsewhere, but also to relinquish their U.S. citizenship. The committee does not believe that the Internal Revenue Code should be used to stop U.S. citizens or residents from expatriating; however, the committee also does not believe that the code should provide a tax incentive for expatriating.

The committee is concerned that present law, which bases the application of the alternative method of taxation under sections 877, 2107 and 2501(a)(3) ("expatriation tax provisions") to former citizens on proof of a tax-avoidance purpose, may be difficult to administer. Thus, the bill generally subjects certain former citizens to the expatriation tax provisions without inquiry as to their motive for losing their U.S. citizenship, but allows certain individuals to request a ruling from the Secretary of Treasury as to whether the loss of citizenship had a principal purpose of tax avoidance. The committee believes that long-term permanent residents of the United States (i.e., green-card holders) should similarly be taxed under the expatriation tax provisions for 10 years after their U.S. residency is terminated.

The committee is aware that taxpayers may circumvent present-law section 877 by converting U.S. source income to foreign source income. To eliminate taxpayers' ability to escape U.S. tax by such conversions, the bill substantially expands the scope of section 877 to apply to foreign property acquired in nonrecognition transactions. In addition, for purposes of determining the tax liability under section 877, the 10-year period is suspended with respect to any property during the period in which the individual's risk of loss with respect to such property is substantially diminished.

The committee further believes that it is appropriate to tax amounts earned by former U.S. citizens and residents through certain controlled foreign corporations where the taxation of such amounts has been deferred during the period of U.S. citizenship or residency. Therefore, income or gains derived from stock in a foreign corporation that is more than 50-percent owned by a former citizen or resident is taxable under the bill to the extent of the earnings and profits attributable to such stock if the income or gains are realized within the 10-year period after the relinquishment of U.S. citizenship or termination of U.S. residency. This rule

[63] Code section 7701(b)(6)(B) provides that an individual who has obtained the status of residing permanently in the United States as an immigrant (i.e., an individual who has obtained a green card) will continue to be taxed as a lawful permanent resident of the United States until such status is revoked, or is administratively or judicially determined to have been abandoned.

applies to earnings and profits attributable to such stock but only to the extent earned during the preexpatriation period.

The committee understands that amounts taxed under the expatriation tax provisions could be subject to double taxation (e.g., taxed by both the United States and the country of residence of the expatriate). Therefore, the bill provides relief from double taxation in circumstances where another country also taxes the same item that is subject to tax under the expatriation tax provisions.

The committee is also aware that certain existing U.S. income tax treaties may not permit the United States to assert its taxing jurisdiction on former citizens or long-term residents who are residents of such countries. The committee believes that the modified expatriation tax provisions are generally consistent with the underlying principles of income tax treaties to the extent the bill provides a foreign tax credit for items that are taxed by another country, thus ceding primary taxing jurisdiction to the foreign country. To the extent that the modified expatriation provisions do conflict with the provisions of tax treaties, the committee expects that the Treasury Department will renegotiate those treaties to eliminate any such conflicts. In the interim, the new provisions take precedence over the treaties for a period of 10 years.

In order to enhance compliance with the expatriation tax provisions, and to assist the IRS in identifying former U.S. citizens and residents who are subject to the expatriation tax provisions, the bill imposes an information reporting obligation on former citizens and long-term residents at the time of expatriation and requires the State Department and other governmental entities to share certain information with the IRS with respect to such individuals.

Explanation of Provisions

Overview

The bill expands and substantially strengthens in several ways the present-law provisions that subject U.S. citizens who lose their citizenship for tax avoidance purposes to special tax rules for 10 years after such loss of citizenship (secs. 877, 2107, and 2501(a)(3)). First, the bill extends the expatriation tax provisions to apply not only to U.S. citizens who lose their citizenship but also to certain long-term residents of the United States whose U.S. residency is terminated. Second, the bill subjects certain individuals to the expatriation tax provisions without inquiry as to their motive for losing their U.S. citizenship or residency, but allows certain categories of citizens to show an absence of tax-avoidance motives if they request a ruling from the Secretary of the Treasury as to whether the loss of citizenship had a principal purpose of tax avoidance. Third, the bill expands the categories of income and gains that are treated as U.S. source (and therefore subject to U.S. income tax under section 877) if earned by an individual who is subject to the expatriation tax provisions and includes provisions designed to eliminate the ability to engage in certain transactions that under current law partially or completely circumvent the 10-year reach of section 877. Further, the bill provides relief from double taxation in circumstances where another country imposes tax on items that would be subject to U.S. tax under the expatriation tax provisions.

The bill also contains provisions to enhance compliance with the expatriation tax provisions. The bill imposes information reporting obligations on U.S. citizens who lose their citizenship and long-term residents whose U.S. residency is terminated at the time of expatriation. In addition, the bill directs the Treasury Department to undertake a study regarding compliance by individuals living abroad with their U.S. tax reporting obligations and to make recommendations with respect to improving such compliance.

Individuals covered

The present-law expatriation tax provisions apply only to certain U.S. citizens who lose their citizenship. The bill extends these expatriation tax provisions to apply also to long-term residents of the United States whose U.S. residency is terminated. For this purpose, a long-term resident is any individual who was a lawful permanent resident of the United States for at least 8 out of the 15 taxable years ending with the year in which such termination occurs. In applying this 8-year test, an individual is not considered to be a lawful permanent resident for any year in which the individual is taxed as a resident of another country under a treaty tie-breaker rule. An individual's U.S. residency is considered to be terminated when either the individual ceases to be a lawful permanent resident pursuant to section 7701(b)(6) (i.e., the individual loses his or her green-card status) or the individual is treated as a resident of another country under a tie-breaker provision of a tax treaty (and the individual does not elect to waive the benefits of such treaty). Furthermore, a long-term resident may elect to use the fair market value basis of property on the date the individual became a U.S. resident (rather than the property's historical basis) to determine the amount of gain subject to the expatriation tax provisions if the asset is sold within the 10-year period.

Under present law, the expatriation tax provisions are applicable to a U.S. citizen who loses his or her citizenship unless such loss did not have as a principal purpose the avoidance of taxes. Under the bill, U.S. citizens who lose their citizenship and long-term residents whose U.S. residency is terminated are generally treated as having lost such citizenship or terminated such residency with a principal purpose of the avoidance of taxes if either: First, the individual's average annual U.S. Federal income tax liability for the 5 taxable years ending before the date of such loss or termination is greater than $100,000 (the "tax liability test"), or second, the individual's net worth as of the date of such loss or termination is $500,000 or more (the "net worth test"). The dollar amount thresholds contained in the tax liability test and the net worth test are indexed for inflation in the case of a loss of citizenship or termination of residency occurring in any calendar year after 1996. An individual who falls below the thresholds specified in both the tax liability test and the net worth test is subject to the expatriation tax provisions unless the individual's loss of citizenship or termination of residency did not have as a principal purpose the avoidance of tax (as under present law in the case of U.S. citizens).

A U.S. citizen, who loses his or her citizenship and who satisfies either the tax liability test or the net worth test, is not subject to the expatriation tax provisions if such individual can demonstrate that he or she did not have a principal purpose of tax avoidance and the individual is within one of the following categories: First, the individual was born with dual citizenship and retains only the non-U.S. citizenship; second, the individual becomes a citizen of the country in which the individual, the individual's spouse, or one of the individual's parents, was born; third, the individual was present in the United States for no more than 30 days during any year in the 10-year period immediately preceding the date of his or her loss of citizenship; fourth, the individual relinquishes his or her citizenship before reaching age 18½; or fifth, any other category of individuals prescribed by Treasury regulations. In all of these situations, the individual would have been subject to tax on his or her worldwide income (as are all U.S. citizens) until the time of expatriation. In order to qualify for one of these exceptions, the former U.S. citizen must, within 1 year from the date of loss of citizenship, submit a ruling request for a determination by the Secretary of the Treasury as to whether such loss had as one of its principal purposes the avoidance of taxes. A former U.S. citizen who submits such a ruling request is entitled to challenge an adverse determination by the Secretary of the Treasury. However, a former U.S. citizen who fails to submit a timely ruling request is not eligible for these exceptions. It is expected that in making a determination as to the presence of a principal purpose of tax avoidance, the Secretary of the Treasury will take into account factors such as the substantiality of the former citizen's ties to the United States (including ownership of U.S. assets) prior to expatriation, the retention of U.S. citizenship by the former citizen's spouse, and the extent to which the former citizen resides in a country that imposes little or no tax.

The foregoing exceptions are not available to long-term residents whose U.S. residency is terminated. However, the bill authorizes the Secretary of the Treasury to prescribe regulations to exempt certain categories of long-term residents from the bill's provisions.

Items subject to section 877

Under section 877, an individual covered by the expatriation tax provisions is subject to tax on U.S. source income and gains for a 10-year period after expatriation at the graduated rates applicable to U.S. citizens.[64] The tax under section 877 applies to U.S. source income and gains of the individual for the 10-year period, without regard to whether the property giving rise to such income or gains was acquired before or after the date the individual became subject to the expatriation tax provisions. For example, a U.S. citizen who inherits an appreciated asset immediately before losing citizenship and disposes of the asset immediately after such loss would not recognize any taxable gain on such disposition (because of the date of death fair market value basis accorded to inherited assets), but the

[64] Under present law, all nonresident aliens (including expatriates) are subject to U.S. income tax at graduated rates on certain types of income. Such income includes income effectively connected with a U.S. trade or business and gains from the disposition of interests in U.S. real property. For example, compensation (including deferred compensation) paid with respect to services performed in the United States is subject to such tax. Thus, under current law, a U.S. citizen who earns a stock option while employed in the United States and delays the exercise of such option until after such individual loses his or her citizenship is subject to U.S. tax on the compensation income recognized upon exercise of the stock option (even if the stock received upon the exercise is stock in a foreign corporation).

individual would continue to be subject to tax under section 877 on the income or gain derived from any U.S. property acquired with the proceeds from such disposition.

In addition, section 877 currently recharacterizes as U.S. source income certain gains of individuals who are subject to the expatriation tax provisions, thereby subjecting such individuals to U.S. income tax on such gains. Under this rule, gain on the sale or exchange of stock of a U.S. corporation or debt of a U.S. person is treated as U.S. source income. In this regard, under current law, the substitution of a foreign obligor for a U.S. obligor is generally treated as a taxable exchange of the debt instrument, and therefore any gain on such exchange is subject to tax under section 877. The bill extends this recharacterization to income and gains derived from property obtained in certain transactions on which gain or loss is not recognized under present law. An individual covered by section 877 who exchanges property that would produce U.S. source income for property that would produce foreign source income is required to recognize immediately as U.S. source income any gain on such exchange (determined as if the property had been sold for its fair market value on such date). To the extent gain is recognized under this provision, the property would be accorded the step-up in basis provided under current law. This rule requiring immediate gain recognition does not apply if the individual enters into an agreement with the Secretary of the Treasury specifying that any income or gains derived from the property received in the exchange during the 10-year period after the loss of citizenship (or termination of U.S. residency, as applicable) would be treated as U.S. source income. Such a gain recognition agreement terminates if the property transferred in the exchange is disposed of by the acquiror, and any gain that had not been recognized by reason of such agreement is recognized as U.S. source as of such date. It is expected that a gain recognition agreement would be entered into not later than the due date for the tax return for the year of the exchange. In this regard, the Secretary of the Treasury is authorized to issue regulations providing similar treatment for nonrecognition transactions that occur within 5 years immediately prior to the date of loss of citizenship (or termination of U.S. residency, as applicable).

The Secretary of Treasury is authorized to issue regulations to treat removal of tangible personal property from the United States, and other circumstances that result in a conversion of U.S. source income to foreign source income without recognition of any unrealized gain, as exchanges for purposes of computing gain subject to section 877. The taxpayer may defer the recognition of the gain if he or she enters into a gain recognition agreement as described above. For example, a former citizen who removes appreciated artwork that he or she owns from the United States could be subject to immediate tax on the appreciation under this provision unless the individual enters into a gain recognition agreement.

The foregoing rules regarding the treatment under section 877 of nonrecognition transactions are illustrated by the following examples: Ms. A loses her U.S. citizenship on January 1, 1996, and is subject to section 877. On June 30, 1997, Ms. A transfers the stock she owns in a U.S. corporation, USCo, to a wholly-owned foreign corporation, FCo, in a transaction that qualifies for tax-free treatment under section 351. At the time of such transfer, A's basis in the stock of USCo is $100,000 and the fair market value of the stock is $150,000. Under present law, Ms. A. would not be subject to U.S. tax on the $50,000 of gain realized on the exchange. Moreover, Ms. A would not be subject to U.S. tax on any distribution of the proceeds from a subsequent disposition of the USCo stock by FCo. Under the bill, if Ms. A does not enter into a gain recognition agreement with the Secretary of the Treasury, Ms. A would be deemed to have sold the USCo stock for $150,000 on the date of the transfer, and would be subject to U.S. tax in 1997 on the $50,000 of gain realized. Alternatively, if Ms. A enters into a gain recognition agreement, she would not be required to recognize for U.S. tax purposes in 1997 the $50,000 of gain realized upon the transfer of the USCo stock to FCo. However, under the gain recognition agreement, for the 10-year period ending on December 31, 2005, any income (e.g., dividends) or gain with respect to the FCo stock would be treated as U.S. source, and therefore Ms. A would be subject to tax on such income or gain under section 877. If FCo disposes of the USCo stock on January 1, 2002, Ms. A's gain recognition agreement would terminate on such date, and Ms. A would be required to recognize as U.S. source income at that time the $50,000 of gain that she previously deferred under the gain recognition agreement. (The amount of gain required to be recognized by Ms. A in this situation would not be affected by any changes in the value of the USCo stock since her June 30, 1997 transfer of such stock to FCo.)

The bill also extends the recharacterization rules of section 877 to treat as U.S. source any income and gains derived from stock in a foreign corporation if the individual losing citizenship or terminating residency owns, directly or indirectly, more than 50 percent of the vote or value of the stock of the corporation on the date of such loss or termination or at any time during the 2 years preceding such date. Such income and gains are recharacterized as U.S. source only to the extent of the amount of earnings and profits attributable to such stock earned or accumulated prior to the date of loss of citizenship (or termination of residency, as applicable) and while such ownership requirement is satisfied.

The following example illustrates this rule: Mr. B loses his U.S. citizenship on July 1, 1996 and is subject to section 877. Mr. B has owned all of the stock of a foreign corporation, FCo, since its incorporation in 1991. As of FCo's December 31, 1995 year-end, FCo has accumulated earnings and profits of $500,000. FCo has earnings and profits of $100,000 for 1996 and does not have any subpart F income (as defined in sec. 952). FCo makes a $100,000 distribution to Mr. B in each of 1997 and 1998. On January 1, 1999, Mr. B disposes of all his stock of FCo and realizes $400,000 of gain. Under present law, neither the distributions from FCo nor the gain on the disposition of the FCo stock would be subject to U.S. tax. Under the bill, the distributions from FCo and the gain on the sale of the stock of FCo would be treated as U.S. source income and would be taxed to Mr. B under section 877, subject to the earnings and profits limitation. For this purpose, the amount of FCo's earnings and profits for 1996 is prorated based on the number of days during 1996 that Mr. B is a U.S. citizen. Thus, the amount of FCo's earnings and profits earned or accumulated before Mr. B's loss of citizenship is $550,000. Accordingly, the $100,000 distributions from FCo in 1997 and 1998 would be treated as U.S. source income taxable to Mr. B under section 877 in such years. In addition, $350,000 of the gain realized from the sale of the stock of FCo in 1999 would be treated as U.S. source income taxable to Mr. B under section 877 in that year.

Special rule for shift in risks of ownership

Section 877 applies to income and gains for the 10-year period following the loss of citizenship (or termination of residency, as applicable). For purposes of applying section 877, the bill suspends this 10-year period for gains derived from a particular property during any period in which the individual's risk of loss with respect to such property is substantially diminished. For example, Ms. C loses her citizenship on January 1, 1996 and is subject to section 877. On that date Ms. C owns 10,000 shares of stock of a U.S. corporation, USCo, with a value of $1 million. On the same date Ms. C enters into an equity swap with respect to such USCo stock with a 5-year term. Under the transaction, Ms. C will transfer to the counter-party an amount equal to the dividends on the USCo stock and any increase in the value of the USCo stock for the 5-year period. The counter-party will transfer to Ms. C an amount equal to a market rate of interest on $1 million and any decrease in the value of the USCo stock for the same period. Ms. C's risk of loss with respect to the USCo stock is substantially diminished during the 5-year period in which the equity swap is in effect, and therefore, under the bill, the 10-year period under section 877 is suspended during such period. Accordingly, under the bill, if Ms. C sells her USCo stock for a gain on January 1, 2010, such gain would be treated as U.S. source income taxable to Ms. C under section 877. Such gain would not be subject to U.S. tax under present law.

Double tax relief

In order to avoid the double taxation of individuals subject to the expatriation tax provisions, the bill provides a credit against the U.S. tax imposed under such provisions for any foreign income, gift, estate or similar taxes paid with respect to the items subject to such taxation. This credit is available only against the tax imposed solely as a result of the expatriation tax provisions, and is not available to be used to offset any other U.S. tax liability. For example, Mr. D loses his citizenship on January 1, 1996 and is subject to section 877. Mr. D becomes a resident of Country X. During 1996, Mr. D recognizes a $100,000 gain upon the sale of stock a U.S. corporation, USCo. Country X imposes $20,000 tax on this capital gain. But for the double tax relief provision, Mr. D would be subject to tax of $28,000 on this gain under section 877. However, Mr. D's U.S. tax under section 877 would be reduced by the $20,000 of foreign tax paid, and Mr. D's resulting U.S. tax on this gain would be $8,000.

Effect on tax treaties

While the committee believes that the expatriation tax provisions, as amended by this bill, are generally consistent with the underlying principles of income tax treaties to the extent the bill provides a foreign tax credit for items taxed by another country, it is intended that the purpose of the expatriation tax provisions, as amended, not be defeated by any treaty provision. The Treasury Department is expected to review all outstanding treaties to determine whether the expatriation tax provisions, as revised, potentially conflict with treaty provisions and to eliminate any such potential conflicts through renegotiation of the affected treaties as necessary. Beginning on the 10th anniversary of the enactment of the bill, any conflicting treaty provisions that remain in force would take precedence over the expatriation tax provisions as revised.

Required information reporting and sharing

Under the bill, a U.S. citizen who loses his or her citizenship is required to provide a statement to the State Department (or other designated government entity) which includes the individual's Social Security number, forwarding foreign address, new country of residence and citizenship and, in the case of individuals with a net worth of at least $500,000, a balance sheet. The entity to which such statement is to be provided is required to provide to the Secretary of the Treasury copies of all statements received and the names of individuals who refuse to provide such statements. A long-term resident whose U.S. residency is terminated is required to attach a similar statement to his or her U.S. income tax return for the year of such termination. An individual's failure to provide the required statement results in the imposition of a penalty for each year the failure continues equal to the greater of first, 5 percent of the individual's expatriation tax liability for such year, or second, $1,000.

The bill requires the State Department to provide the Secretary of the Treasury with a copy of each CLN approved by the State Department. Similarly, the bill requires the agency administering the immigration laws to provide the Secretary of the Treasury with the name of each individual whose status as a lawful permanent resident has been revoked or has been determined to have been abandoned.

Further, the bill requires the Secretary of the Treasury to publish in the Federal Register the names of all former U.S. citizens from whom it receives the required statements or whose names it receives under the foregoing information-sharing provisions.

Treasury report on tax compliance by U.S. citizens and residents living abroad

In order to address the compliance issues raised during the course of the Joint Committee staff study on the taxation of expatriates, the Treasury Department is directed to undertake a study on the tax compliance of U.S. citizens and green-card holders residing outside the United States and to make recommendations regarding the improvement of such compliance. The findings of such study and such recommendations are required to be reported to the

House Committee on Ways and Means and the Senate Committee on Finance within 90 days of the date of enactment.

During the course of the Joint Committee staff study, a specific issue was identified regarding the difficulty in determining when a U.S. citizen has committed an expatriating act with the requisite intent, and thus no longer has the obligation to continue to pay U.S. taxes on his or her worldwide income due to the fact that the individual is no longer a U.S. citizen. Neither the Immigration and Nationality Act nor any other Federal law requires an individual to request a CLN within a specified amount of time after an expatriating act has been committed, even though the expatriating act terminates the status of the individual as a U.S. citizen for all purposes, including the status of being subject to U.S. tax on worldwide income. Accordingly, it is anticipated that the Treasury report, in evaluating whether improved coordination between executive branch agencies could improve compliance with the requirements of the Internal Revenue Code, will review the process through which the State Department determines when citizenship has been lost, and make recommendations regarding changes to such process to recognize the importance of such date for tax purposes. In particular, it is anticipated that the Treasury Department will explore ways of working with the State Department to insure that the State Department will not issue a CLN confirming the commission of an expatriating act with the requisite intent necessary to terminate citizenship in the absence of adequate evidence of both the occurrence of the expatriating act (e.g., the joining of a foreign army) and the existence of the requisite intent.

Effective Date

The expatriation tax provisions as modified by the bill generally apply to any individual who loses U.S. citizenship on or after February 6, 1995, and any long-term residents whose U.S. residency is terminated on or after June 13, 1995. For citizens, the determination of the date of loss of citizenship remains the same as under present law (i.e., the date of loss of citizenship is the date of the expatriating act). However, a special transition rule applies to individuals who committed an expatriating act within 1 year prior to February 6, 1995, but had not applied for a CLN as of such date. Such an individual is subject to the expatriation tax provisions as amended by the bill as of the date of application for the CLN, but is not retroactively liable for U.S. income taxes on his or her worldwide income. In order to qualify for the exceptions provided for individuals who fall within one of the specified categories, such individual is required to submit a ruling request within 1 year after the date of enactment of the bill.

The special transition rule is illustrated by the following example. Mr. E joined a foreign army on October 1, 1994 with the intent to relinquish his U.S. citizenship, but Mr. E does not apply for a CLN until October 1, 1995. Mr. E would be subject to the expatriation tax provisions (as amended) for the 10-year period beginning on October 1, 1995. Moreover, if Mr. E falls within one of the specified categories (i.e., Mr. E is age 18 when he joins the foreign army), in order to qualify for the exception provided for such individuals, Mr. E would be required to submit his ruling request within 1 year after the date of enactment of the bill. Mr. E would not, however, be liable for U.S. income taxes on his worldwide income for any period after October 1, 1994.

11. Phaseout of tax credits for wind energy and ''closed loop'' biomass (sec. 13621 of the bill and sec. 45 of the code)

Present Law

An income tax credit is allowed for the production of electricity from either qualified wind energy or qualified ''closed-loop'' biomass facilities (sec. 45). The credit is equal to 1.5 cents (adjusted for inflation since 1992) per kilowatt hour of electricity produced from these qualified sources during the 10-year period after the facility is placed in service.

The credit applies to electricity produced by a qualified wind energy facility placed in service after December 31, 1993, and before July 1, 1999, and to electricity produced by a qualified closed-loop biomass facility placed in service after December 31, 1992, and before July 1, 1999. Closed-loop biomass is the use of plant matter, where the plants are grown for the sole purpose of being used to generate electricity. It does not apply to the use of waste materials (including, but not limited to, scrap wood, manure, and municipal or agricultural waste). It also does not apply to taxpayers who use standing timber to produce electricity. In order to claim the credit, a taxpayer must own the facility and sell the electricity produced by the facility to an unrelated party.

The credit for electricity produced from wind or closed-loop biomass is a component of the general business credit (sec. 38(b)(1)). This credit, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of first, 25 percent of net regular tax liability above $25,000 or second, the tentative minimum tax. An unused general business credit generally may be carried back 3 taxable years and carried forward 15 taxable years.

Reasons for Change

The committee believes that it is inappropriate to provide special tax credits to narrow categories of taxpayers. Moreover, the committee believes that free market prices should determine the choice of electricity production. Providing a tax incentive to one mode of production generally creates economic inefficiencies and distorts markets.

Explanation of Provision

Under the provision, the income tax credit for electricity produced from wind and closed-loop biomass is available only for qualifying electricity produced from facilities placed in service before September 14, 1995, with an exception for facilities placed in service before September 14, 1996, pursuant to a binding contract in existence on September 13, 1995, and at all times thereafter. As under present law, the credit is allowable only for production from a qualified facility during the 10-year period after it is placed in service.

Effective Date

The provision is effective for taxable years ending after September 13, 1995.

12. Modify tax benefits for ethanol and methanol from renewable sources (sec. 13622 of the bill and secs. 40, 4041, 4081–4083, 4091–4093, 6421, 6427, and 9502, 9503 of the code)

Present Law

Present law provides several tax benefits for ethanol and methanol produced from renewable sources (e.g., biomass) that is used as a motor fuel or that is blended with other fuels (e.g., gasoline) for such a use. These benefits are: First, A 54 cents per gallon of ethanol (60 cents per gallon for methanol) blender income tax credit; second, a 5.4-cents-per-gallon (6 cents per gallon for methanol) excise tax exemption from the motor fuels excise taxes;[65] and third, in the case of ethanol, a separate 10-cents-per-gallon credit for small producers, defined generally as persons whose production does not exceed 15 million gallons per year and whose production capacity does not exceed 30 million gallons per year.

The benefits of the blender income tax credit and the excise tax exemption are integrated so that they are not cumulative beyond an aggregate amount of 54 cents (or 60 cents) per gallon of alcohol.

Treasury Department regulations provide that ethyl tertiary butyl ether [ETBE], which is made using ethanol, qualifies for the blender income tax credit and the excise tax exemption.

These alcohol fuels tax benefits are scheduled to expire after December 31, 2000.

Reasons for Change

In a period of spending reductions in order to balance the Federal budget, tax benefits must be reviewed carefully. Particular attention must be paid to those provisions that provide high benefit levels and to benefits that reduce funds available for important programs like the Federal Highway trust fund. The September 11, 1995, issue of Oxy-Fuel News showed that the current wholesale price of ethanol averages approximately $1.08 per gallon. Thus, the current 54-cents-per-gallon tax benefit equals approximately 50 percent of the wholesale price of this product. The committee determined that this benefit level cannot be justified under current circumstances and decided, therefore, to limit and modify benefits. A production ceiling, rather than immediate repeal, was chosen to allow current producers 5 years in which to recover any costs that have been incurred to date.

The committee further is aware that carbon dioxide is a naturally occurring by-product of ethanol production. This carbon dioxide is commercially valuable, and some ethanol producers are reap-

[65] Except in the case of certain "near" alcohol fuels, the 5.4-cents-per-gallon and 6-cents-per-gallon exemptions generally assume a 90-percent gasoline/10 percent alcohol blend fuel, and thus are equivalent to the blender income tax credit of 54 cents per gallon of alcohol.

ing an unintended subsidy by capturing and selling this "free" by-product. The committee determined that the ethanol tax benefit should be reduced to reflect the commercial value of this carbon dioxide.

The committee further determined that this tax benefit should be restricted to the products for which it originally intended—ethanol and methanol—and should not be expanded, as the Treasury Department recently inappropriately attempted to do by regulation, to new products (ethers) that have not been approved by the Congress.

Finally, the committee continues to be extremely cognizant of the potential effect on tax compliance of any actions it may take. Under the bill, not all fuel alcohol will be eligible for tax benefits. Both eligible alcohol and other alcohol will be sold from the same facilities. Retaining the current provisions allowing the full 54-cents-per-gallon ethanol (and 60-cents-per-gallon methanol) benefit to be claimed through the excise tax system would lead to significant tax evasion. Because recent changes in the collection procedures for the gasoline and diesel fuel excise taxes have been shown to increase compliance with these taxes significantly and because the fuel alcohol distribution system is like that of those fuels, the committee decided to extend those rules to fuel alcohol to minimize tax evasion and ensure that only eligible alcohol receives tax benefits.

Explanation of Provisions

Limit on eligible production

The 54-cents-per-gallon ethanol (60 cents per gallon for methanol) blender income tax credit and the excise tax exemptions for ethanol and methanol from renewable sources, as modified by the proposal, are available only for alcohol fuels produced by distilling equipment placed in service before September 14, 1995. Additionally, alcohol fuels produced by producers other than small producers (defined as under present law), will be eligible for the blenders income tax credit only to the extent that annual production after September 13, 1995, does not exceed average annual production of fuel alcohol by such equipment during the 3-year period ending on August 31, 1995. Production from equipment placed in service before September 1, 1995, that was in service for at least the 3-month period ending on August 31, 1995, will be allowed to annualize actual production in applying the limit. A safe-harbor production level equal to 50 percent of capacity also is provided for equipment that was not in service for the entire 3-year base period or that is placed in service pursuant to the transition rule described under Effective Dates, below.

The current December 31, 2000, general sunset for these benefits is retained.

Excise tax compliance provisions

To ensure that tax benefits are available only to eligible alcohol, fuel alcohol generally will be subject to the same excise tax rules as gasoline, with the addition of a provision allowing alcohol designated by registered producers as eligible for tax benefits under the revised rules to be sold tax-free. Under these rules, fuel alcohol plants will be registered by the Internal Revenue Service as refineries and alcohol bulk plants would be registered as terminals. Fuel alcohol will be taxed at the gasoline tax rate on removal from the distilling plant unless it is first, designated by a registered producer as eligible for tax benefits, or second, removed in bulk to a registered bulk plant. Alcohol not designated by a registered producer as qualifying for tax benefits will be subject to tax at the gasoline tax rate on removal from the bulk plant; alcohol designated by such a producer as eligible for tax benefits may be removed tax-free.

Under the provision, tax benefits in excess of the gasoline excise tax rate will be claimed by blenders through the present-law income tax credit (sec. 40). Conforming amendments are made repealing the present excise tax reduced rate sales provisions, the excise tax alcohol blender refund provision, and the 5.4-cents-per-gallon ethanol (6 cents per gallon for methanol) excise tax exemptions.

Reduce ethanol tax benefits to reflect carbon dioxide byproduct value; offset for small producers

The 54-cents-per-gallon ethanol income tax credit is reduced to 51 cents per gallon to reflect the value of carbon dioxide recovered as a by-product in ethanol production.

The present-law small ethanol producers credit is increased from 10 to 13 cents per gallon to offset the effect of this reduction on small producers.

ETBE and similar ethers not to qualify

Statutory clarification is provided that ETBE and similar ethers (and alcohol used to produce these ethers) are not qualified alcohol fuels for either the ethanol or methanol from renewable sources tax benefits.

Effective Dates

Limit on eligible production

The provision limiting production eligible for certain alcohol fuels tax benefits applies to distilling equipment placed in service after September 13, 1995, with an exception for property placed in service before September 14, 1996, pursuant to a binding contract in existence on September 13, 1995, and at all times thereafter.

The limit on production eligible for tax benefits from distilling equipment placed in the service generally before September 14, 1995, to amounts based on average production during the 3-year period ending on August 31, 1995, is effective for production occurring after September 13, 1995.

Excise tax compliance provisions

The excise tax compliance provisions are effective on and after January 1, 1996.

Reduce ethanol tax benefits to reflect carbon dioxide byproduct value

The reduction in the ethanol blenders credit to reflect the value of carbon dioxide produced as a byproduct is effective on and after

January 1, 1996. The offsetting increase in the small ethanol producers credit is effective for production occurring on and after January 1, 1996.

ETBE and similar ethers not to qualify

The provision reversing the Treasury Department regulations defining certain ethers as qualified alcohol fuels is effective after December 31, 1995.

13. Remove business exclusion for energy subsidies provided by public utilities (sec. 13623 of the bill and sec. 136 of the code)

Present Law

Internal Revenue Code section 136, as added by the Energy Policy Act of 1992, provides an exclusion from the gross income of a customer of a public utility for the value of any subsidy provided by the utility for the purchase or installation of an energy conservation measure with respect to a dwelling unit (as defined by sec. 280A(f)(1)). In addition, for subsidies received after 1994, section 136 provides a partial exclusion from gross income for the value of any subsidy provided by a utility for the purchase or installation of an energy conservation measure with respect to property that is not a dwelling unit. The amount of the exclusion is 40 percent of the value for subsidies received in 1995, 50 percent of the value for subsidies received in 1996, and 65 percent of the value for subsidies received after 1996.

For this purpose, an energy conservation measure is any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to property. With respect to property other than a dwelling unit, an energy conservation measure includes "specially defined energy property" (generally, property described in sec. 48(l)(5) of the code as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990).

The exclusion does not apply to payments made to or from a qualified cogeneration facility or a qualifying small power production facility pursuant to section 210 of the Public Utility Regulatory Policy Act of 1978.

Section 136 denies a deduction or credit to a taxpayer (or in appropriate cases requires a reduction in the adjusted basis of property of a taxpayer) for any expenditure to the extent that a subsidy related to the expenditure was excluded from the gross income of the taxpayer.

Reasons for Change

The committee believes that the present-law exclusion for energy conservation measures are appropriate with respect to individual consumers because the taxation of such benefits may impose unduly harsh recordkeeping burdens. However, with respect to businesses, the committee believes the exclusion results in the mismeasurement of business income and may create biases against certain types of conservation programs.

Explanation of Provision

The provision repeals the partial exclusion for any subsidy provided by a utility for the purchase or installation of an energy conservation measure with respect to property that is not a dwelling unit.

Effective Date

The provision is effective for subsidies received after September 13, 1995, unless received pursuant to a binding written contract in effect on that date and all times thereafter.

14. Modify basis adjustment rules under section 1033 (sec. 13626 of the bill and sec. 1033 of the code)

Present Law

Under section 1033, gain realized by a taxpayer from certain involuntary conversions of property is deferred to the extent the taxpayer purchases property similar or related in service or use to the converted property within a specified period of time. The replacement property may be acquired directly or by acquiring control of a corporation (generally 80 percent of the stock of the corporation) that owns replacement property.[66] The taxpayer's basis in the replacement property generally is the same as the taxpayer's basis in the converted property, decreased by the amount of any money or loss recognized on the conversion, and increased by the amount of any gain recognized on the conversion. In cases in which a taxpayer purchases stock as replacement property, section 1033 permits the taxpayer to reduce the basis of the stock, but does not require any reduction in the basis of the underlying assets. Thus, the reduction in the basis of the stock generally does not result in reduced depreciation deductions.

Reasons for Change

The committee believes that if a taxpayer elects to defer the recognition of gain with respect to property that is involuntarily converted, the taxpayer should have the same adjusted basis in the acquired property that is similar or related in service or use to the converted property, regardless of whether such property is acquired directly or indirectly through the acquisition of stock of a corporation.

Explanation of Provision

The provision provides that where the taxpayer satisfies the replacement property requirement of section 1033 by acquiring stock in a corporation, the corporation generally will reduce its adjusted bases in its assets by the amount by which the taxpayer reduces its basis in the stock. The corporation's adjusted bases in its assets

[66] Although section 1033 and the underlying Treasury regulations do not provide the extent to which the assets of a corporation must qualify as similar use property in order for the acquisition of the corporation to qualify as replacement property, the law has developed to require that the assets of the corporation must "primarily" or "principally" be similar use property. See, e.g., *Templeton* v. *Comm.*, 67 T.C. 518, at 521 (1977) and Rev. Rul. 82–70, 1982–1 C.B. 114 (relating to broadcast property).

will not be reduced, in the aggregate, below the taxpayer's basis in its stock (determined after the appropriate basis adjustment for the stock). In addition, the basis of any individual asset will not be reduced below zero. The basis reduction first is applied to first, property that is similar or related in service or use to the converted property, then second, to other depreciable property, then third, to other property.

The application of these rules can be demonstrated by the following examples:

Example 1: Assume that a taxpayer owned a commercial building with an adjusted basis of $100,000 that was involuntarily converted, causing the taxpayer to receive $1 million in insurance proceeds. Further assume that the taxpayer acquires all of the stock of a corporation, the sole asset of the corporation is a building with a value and an adjusted basis of $1 million, and the stock acquisition qualifies as the acquisition of replacement property. Under the provision, for section 1033 to apply, the taxpayer would reduce its basis in the stock to $100,000 (as under present law) and the corporation would reduce its adjusted basis in the building to $100,000.

Example 2: Assume the same facts as in Example 1, except that on the date of acquisition, the corporation has an adjusted basis of $100,000 (rather than $1 million) in the building. Under the provision, the taxpayer reduces its basis in the stock to $100,000 (as under present law) and the corporation is not required to reduce its adjusted basis in the building.

Effective Date

The provision applies to involuntary conversions occurring after September 13, 1995.

15. Modify the exception to the related party rule of section 1033 for individuals to only provide an exception for de minimis amounts (sec. 13627 of the bill and sec. 1033 of the code)

Present Law

Under section 1033, gain realized by a taxpayer from certain involuntary conversions of property is deferred to the extent the taxpayer purchases property similar or related in service or use to the converted property within a specified period of time. Pursuant to a provision of H.R. 831, as passed by the Congress and signed by the President on April 11, 1995 (Public Law 104–7), subchapter C corporations (and certain partnerships with corporate partners) are not entitled to defer gain under section 1033 if the replacement property or stock is purchased from a related person. A person is treated as related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1). An exception to this related party rule provides that a taxpayer could purchase replacement property or stock from a related person and defer gain under section 1033 to the extent the related person acquired the replacement property or stock from an unrelated person within the period prescribed under section 1033.

Reasons for Change

The committee believes that, except for de minimis cases, individuals should be subject to the same rules with respect to the acquisition of replacement property from a related person as are other taxpayers.

Explanation of Provision

The provision expands the present-law denial of the application of section 1033 to any other taxpayer (including an individual) that acquires replacement property from a related party (as defined by secs. 267(b) and 707(b)(1)) unless the taxpayer has aggregate realized gain of $100,000 or less for the taxable year with respect to converted property with aggregate realized gains. In the case of a partnerships (or S corporation), the annual $100,000 limitation applies to both the partnership (or S corporation) and each partner (or shareholder).

Effective Date

The provision applies to involuntary conversions occurring after September 13, 1995.

16. Disallow rollover under section 1034 to extent of previously claimed depreciation for home office or other depreciable use of residence (sec. 13628 of the bill and sec. 1034 of the code)

Present Law

Rollover

Generally, no gain is recognized on the sale or exchange of a principal residence to the extent that the amount of the sales price of the old residence is reinvested in a new residence within a specified period (''the rollover''). The specified period generally is a period beginning 2 years before the sale of the old residence and ending 2 years after the sale of the old residence.

One-time exclusion

In general, a taxpayer may exclude from gross income up to $125,000 of gain from the sale or exchange of a principal residence if the taxpayer first, has attained age 55 before the sale, and second, has used the residence as a principal residence for 3 or more years of the 5 years preceding the sale. This election is allowed only once in a lifetime unless all previous elections are revoked. For these purposes, sales on or before July 26, 1978, are not counted against the once-in-a-lifetime limit.

In the case of a mixed use of a residence, the exclusion is limited only to that portion of the residence that is owned and used by the individual as his principal residence for at least 3 of the previous 5 years before the date of sale. Gain on the portion not qualifying as a principal residence is not eligible for this exclusion.

Reasons for Change

The rollover and one-time exclusion provisions provide special treatment for the principal residence of a taxpayer. The committee believes that, to the extent a structure is treated as a business asset (as evidenced by depreciation deductions allowable) and not as a principal residence, the special rules applicable to principal residences are not appropriate.

Explanation of Provision

Rollover

The bill provides that gain is recognized on the sale of a principal residence to the extent of any depreciation allowable with respect to such principal residence for periods after December 31, 1995.

One-time exclusion

The bill imposes an additional restriction on the availability of the one-time exclusion. Specifically, the proposal provides that the amount of the otherwise allowable one-time exclusion is reduced and therefore the amount of recognized gain is increased to the extent of depreciation allowable with respect to such principal residence for periods after December 31, 1995. The bill does not change the amount of the allowable depreciation or the gain recognition treatment on the rental portion of the building under present law. To illustrate the bill, assume the following facts: a 60-year old taxpayer purchased a building on January 1, 1995, for $150,000, one-third of which was rented to an unrelated person and two-thirds of which was used as the taxpayer's principal residence for at least 3 of the next 5 years. Further, assume that the taxpayer used one-tenth of the nonrental space as a qualified home office with allowable annual depreciation of $256. Finally, assume that the taxpayer sells the building for $300,000 on January 1, 2000. The taxpayer's realized gain is $150,000 of which $100,000 (representing the portion of the building used as a principal residence) is eligible for the one-time exclusion under present law. Under the bill that $100,000 is reduced by the amount of depreciation allowable with respect to that residence after December 31, 1995 ($1,024).

Effective Date

The provision is effective for taxable years ending after December 31, 1995.

17. Provide that rollover of gain on sale of a principal residence cannot be elected unless the replacement property purchased is located in the United States (sec. 13629 of the bill and sec. 1034 of the code)

Present Law

Generally, no gain is recognized on the sale or exchange of a principal residence to the extent that the amount of the sales price of the old residence is reinvested in a new residence within a specified period ("the rollover"). The specified period generally is a period beginning 2 years before the sale of the old residence and ending 2 years after the sale of the old residence. There is no requirement that either the old residence or new residence be located within the United States or its possessions.

Reasons for Change

The committee is concerned that resident aliens can improperly avoid taxation of gains from the sale of their principal residences in the United States. Specifically, a resident alien can avoid taxation by claiming a rollover under code section 1034 and then ending residence status within 2 years of the sale of the old residence. The committee believes that this provision is necessary to ensure such individuals remain subject to U.S. tax law on such gains from the sale of their principal residence located in the United States.

Explanation of Provision

Generally, the bill requires recognition of gain on the sale or exchange of a principal residence by a resident alien unless the resident alien first, retains resident alien status for at least 2 years after the date of sale, second, becomes a U.S. citizen within 2 years of the date of sale, or third, acquires a replacement residence located in the United States or its possessions within the specified time period.

The bill does not apply where first, the old residence is held jointly by the resident alien and the resident alien's spouse, second, they file a joint tax return, and third, the spouse is a U.S. citizen on the date of sale of the old residence.

Effective Date

The provision applies to the sale of old residences after December 31, 1995, unless a replacement residence was purchased before September 13, 1995, or purchased on or after such date pursuant to a binding contract in effect on such date (and at all times thereafter before such purchase).

18. Tax gambling income of Indian tribes; repeal of targeted exemption from UBIT for gambling in certain States (secs. 13631–13632 of the bill and sec. 511 of the code)

Present Law

Tax treatment of Indian tribes

There is no specific statutory provision governing the Federal income tax liability of Indian tribes.[67] However, the IRS has long taken the position that Indian tribes, as well as wholly owned tribal corporations chartered under Federal law, are not taxable entities and, thus, are immune from Federal income taxes. (See Rev. Rul. 67–284, 1967–2 C.B. 55; Rev. Rul. 81–295, 1981–2 C.B. 15.) More recently, the IRS has ruled that any income earned by an unincorporated Indian tribe or federally chartered tribal corporation is not subject to Federal income tax, regardless of whether the activities that produced the income are conducted on or off the tribe's reservation. (See Rev. Rul. 94–16, 1994–12 I.R.B. 1; Rev. Rul. 94–

[67] Section 7871 provides that Indian tribes are treated as States for certain limited tax purposes, such as for purposes of the issuance of certain tax-exempt bonds, certain excise tax exemptions, and for eligibility to receive deductible charitable contributions.

65, 1994–42 I.R.B. 10.[68]) In ordinary matters not governed by specific treaties or remedial legislation, individual members of Indian tribes are subject to the payment of Federal income tax (even if the income is distributed to individual tribal members out of income otherwise immune from tax when first received by the tribe).[69]

Tribal governments and corporations, as well as individual Indians and their property, generally are exempt from State taxation within their reservations, unless Congress clearly manifests its consent to such taxation.[70] In contrast, property and income earned by Indians outside the reservation generally have been held to be subject to State taxation.[71] In addition, the Supreme Court has upheld a State's right to impose taxes on commercial activities conducted on reservation lands, provided that the legal incidence of the tax falls on non-Indians and the balance of Federal, State, and tribal interests favors the State.[72]

In 1993, Congress enacted two Federal tax incentives for commercial activities conducted (by Indians or non-Indians) on any Indian reservation. These tax incentives are: First, enhanced accelerated depreciation (generally, 60 percent of the normal recovery period) for certain property used in the conduct of a trade or business on a reservation (and certain connecting infrastructure property); and second, a 20-percent incremental wage credit for wages and health insurance costs (up to $20,000 per employee) paid to tribal members and spouses who work on, and live on or near, a reservation.[73] Neither of these tax incentives is available with respect to gambling activities (secs. 45A and 168(j)).

Taxation of gambling activities of nonprofit organizations

Although generally exempt from Federal income tax, tax-exempt organizations are subject to the unrelated business income tax [UBIT] on income derived from a trade or business regularly carried on that is not substantially related to the performance of the

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[68] These rulings further hold, however, that a corporation organized by an Indian tribe under State law is subject to Federal income tax on the income earned from commercial activities conducted on or off the tribe's reservation.

Legal commentators generally have concluded that "[u]nder this so-called Indian Commerce Clause [article I, section 8 of the Constitution] and Supreme Court cases, there is little constitutional limitation on the ability of the Federal Government to tax Indian tribes or tribal members." Aprill, Ellen P., "Tribal Bonds: Indian Sovereignty and the Tax Legislative Process," 46 Admin. L. Rev. 333,334 (1994).

[69] See *Squire* v. *Capoeman*, 351 U.S. 1, 6 (1956). One exception to this general rule is the exclusion from income provided for income received by Indians from the exercise of certain fishing rights guaranteed by treaties, Federal statute or Executive order (sec. 7873). See also 25 U.S.C. sections 1401–1407 (funds appropriated in satisfaction of a judgment of the U.S. Court of Federal Claims in favor of an Indian tribe which are then distributed per capita to tribal members pursuant to a plan approved by the Secretary of Interior are exempt from Federal income taxes); 25 U.S.C. section 117b(a) (per capita distributions made to tribal members from Indian trust fund revenues are exempt from tax if the Secretary of the Interior approves of such distributions).

[70] See, e.g., *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 115 S. Ct. 2214 (1995); *Montana* v. *Blackfeet Tribe of Indians*, 471 U.S. 759 (1985); *McClanahan* v. *Arizona State Tax Comm'n*, 411 U.S. 164 (1973).

[71] See, e.g., *Mescalero Apache Tribe* v. *Jones*, 411 U.S. 145 (1973) (tribe held to be subject to State gross receipts tax on income earned from a ski resort operated by the tribe off-reservation). The Supreme Court also has ruled that a State may impose income tax on members of an Indian tribe who are employed by the tribe on tribal lands but who reside in the State outside of Indian country. *Oklahoma Tax Comm'n* v. *Chickasaw Nation, supra.*

[72] See *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, supra; *Cotton Petroleum* v. *New Mexico*, 490 U.S. 163 (1989) (upholding imposition of State severance tax on private producers of oil and gas on reservation lands).

[73] The wage credit is available only to the extent that the sum of current-year qualified wages and health costs exceeds the sum of comparable costs for 1993.

organization's tax-exempt functions (secs. 511–514). Certain income, however, is exempted from the UBIT (such as interest, dividends, royalties, and certain rents), unless derived from debt-financed property (sec. 512(b)). Other exemptions from the UBIT are provided for activities in which substantially all the work is performed by volunteers and for income from the sale of donated goods (sec. 513(a)). In addition, a specific exemption from the UBIT is provided for bingo games [74] conducted by tax-exempt organizations, provided that the conducting of the bingo games is not an activity ordinarily carried out on a commercial basis and the conducting of which does not violate any State or local law (sec. 513(f)).[75] A specific exemption from the UBIT also is provided for qualified public entertainment activities (meaning entertainment or recreation activities of a kind traditionally conducted at fairs or expositions promoting agricultural and educational purposes) conducted by an organization described in section 501(c)(3), (c)(4), or (c)(5) which regularly conducts an agricultural and educational fair or exposition as one of its substantial exempt purposes (sec. 513(d)).[76]

In *South End Italian Independent Club, Inc.* v. *Commissioner*, 87 T.C. 168 (1986), *acq.* 1987–2 C.B. 1, the court held that gambling profits of a social club described in section 501(c)(7) that were required by State law to be used for charitable purposes were fully deductible under section 162 in computing the UBIT liability of the social club. The effect of this decision was to exempt gambling income of that social club from UBIT. The IRS has indicated that, until further guidance is available with respect to this issue, the issue of the deductibility of amounts required under State law to be used for charitable or other so-called lawful purposes should be resolved consistent with the *South End* case, regardless of whether the gaming proceeds are donated to other charitable organizations or spent internally on the organization's own charitable activities.[77]

Reasons for Change

The committee believes that it is appropriate to treat gambling operations of Indian tribes (and tribal-owned corporations) as separate, taxable businesses, which should be subject to tax under the same rules and tax rates applicable to for-profit gambling establishments.[78] In addition, in order for Congress to review the present-law tax treatment of other gambling activities, the Treasury Department should conduct a study of gambling activities conducted by nonprofit organizations.

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[74] For purposes of this exemption, the term "bingo game" is defined as any game of bingo of a type in which usually first, the wagers are placed, second, the winners are determined, and third, the distribution of prizes or other property is made in the presence of all persons placing wagers in such game (sec. 513(f)(2)).

[75] In 1978, at the same time that Congress enacted section 513(f), section 527 was modified to provide that bingo income of political organizations is to be treated as "exempt function income" and, thus, not subject to tax if such income is used for certain political purposes (sec. 527(c)(3)(D)).

[76] In addition, section 311 of the Deficit Reduction Act of 1984 (as modified by the Tax Reform Act of 1986) provides a special, off-code exemption from the UBIT for games of chance conducted by nonprofit organizations in the State of North Dakota.

[77] See IRS, "Exempt Organizations: Technical Instruction Program for FY 1996" (Training 4277–048 (7–95)) at page 96.

[78] See, e.g., "High-Stakes Casino Game: Mirage vs. Indians," The Wall Street Journal, September 21, 1995, at B1.

Explanation of Provision

The bill subjects to Federal income tax as unrelated business income [UBI] income earned by an Indian tribe, or any corporate entity that is a tax-immune or tax-exempt entity by reason of being owned or controlled by an Indian tribe, from the conduct of class II or class III gaming activities (as defined under the Indian Gaming Regulatory Act, 25 U.S.C. secs. 2701–2721). Thus, Indian tribes will be subject to Federal income tax on income derived from class II gaming operations (e.g., bingo, pull-tabs, lotto) or class III gaming operations (e.g., a casino operated pursuant to a compact between the State government and Indian tribe). As under present-law UBIT rules, a gaming activity will be subject to tax under the provision only if the activity is regularly carried on.[79]

Under the bill, if an Indian tribe is required (by Federal, State, or local law) to use any portion of the net proceeds of gaming activities for charitable or other specified purposes, any portion so used may be deductible only as a charitable contribution, and (under present law sec. 512(b)(10)) such deduction may not exceed 10 percent of the taxable income from the gaming activities. This 10-percent limitation, however, does not apply to any proceeds from gaming activities that are required to be paid as general revenues to the United States or any State or subdivision of a State (which generally will be fully deductible in computing the tribe's taxable income from gaming).

In addition, the bill repeals the special, off-code provision that exempts from the UBIT gaming income earned by nonprofit organizations in North Dakota. With respect to other gaming activities conducted by tax-exempt organizations, the Treasury Department is directed to conduct a study on the nature and extent of gaming activities conducted by organizations exempt from tax under section 501(a), including an examination of: First, the types of gaming activities (e.g., bingo, pull tabs, casino nights) engaged in by charities and other nonprofit organizations and the frequency of such activities; second, the dollar volume of such gaming activities; third, the nature and extent of the involvement of for-profit entities and private parties in the management or operation of gaming activities of nonprofits; fourth, competition between taxable gaming activities and gaming activities that are exempt from Federal income tax; and fifth, an analysis of the present-law tax treatment of gaming activities of tax-exempt organizations and any recommendations for change, including examination of the *South End* decision and special UBIT exception for bingo games. The Treasury Department is required to report the results of this study to Congress no later than July 1, 1996.

Effective Date

The provision is effective on and after January 1, 1996.

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[79] No inference is intended regarding the tax treatment of activities of Indian tribes or tribal-owned corporations under any other provision of the Internal Revenue Code or the IRS current ruling position with respect to Indian tribes and tribal-owned corporations.

19. Repeal exemption for withholding on gambling winnings from bingo and keno where proceeds exceed $5,000 (sec. 13633 of the bill and sec. 3402(q) of the code)

Present Law

In general, proceeds from a wagering transaction are subject to withholding at a rate of 28 percent if the proceeds exceed $5,000 and are at least 300 times as large as the amount wagered. The proceeds from a wagering transaction are determined by subtracting the amount wagered from the amount received. Any nonmonetary proceeds that are received are taken into account at fair market value.

In the case of sweepstakes, wagering pools, or lotteries, proceeds from a wager are subject to withholding at a rate of 28 percent if the proceeds exceed $5,000, regardless of the odds of the wager.

No withholding tax is imposed on winnings from bingo or keno.

Reasons for Change

The committee believes that imposing withholding on winnings from bingo and keno will improve tax compliance.

Explanation of Provision

The provision imposes withholding on proceeds from bingo or keno wagering transactions at a rate of 28 percent if such proceeds exceed $5,000, regardless of the odds of the wager.

Effective Date

The provision is effective for payments made after December 31, 1995.

20. Sunset the low-income housing tax credit after December 31, 1997 (sec. 13636 of the bill and sec. 42 of the code)

Present Law

A tax credit having a 70-percent present value is allowed on qualified low-income rental housing. The credit is reduced to 30 percent for housing receiving most other Federal subsidies. In certain difficult-to-develop areas, the credit is increased by 30 percent (e.g., from 70 to 91 percent). The credit applies to the eligible basis of low-income housing units.

Credits are subject to annual allocations of $1.25 per resident of each State. State housing agencies allocate this amount to eligible projects. Credit amounts that are not allocated in the year in which the cap amount arises may be carried forward by the State for allocation in the following year. Any amounts remaining unallocated after that time revert to a national pool and are reallocated among States that allocated their entire credit amount in the preceding year.

Reasons for Change

In response to reports that substantial amounts of low-income housing credit possibly are being improperly claimed, and that the

Internal Revenue Service and State administering agencies are not adequately monitoring the credit program, the chairman on July 5, 1995, requested the General Accounting Office to review the administration of the credit and report to the committee in early 1996. This study will examine issues such as: First, Whether the credit is being allocated to projects in which low-income tenants are charged full market rents; second, whether inappropriate amounts of the subsidy are being diverted from low-income tenants to developers and syndicators through their fees or to owners through higher than necessary rates of return on their investments; third, what controls, if any, exist at the State level to ensure that the credit is allocated as intended and that costs are reasonable; fourth, how efficiently the IRS is administering the credit program; and fifth, to what extent housing needs of low-income tenants that otherwise would be unmet are satisfied through credit projects. The chairman has requested that the Subcommittee on Oversight oversee the study and review its findings. The committee believes that sunsetting the credit after December 31, 1997, will facilitate this review and help ensure that this tax benefit is used only as intended by the Congress.

Explanation of Provision

The low-income housing tax credit is sunset after December 31, 1997.

Credits allocated from annual State credit caps arising before this expiration date will be unaffected. Similarly, credits for projects financed with tax-exempt bonds issued before January 1, 1998, which are first, placed in service before that date or second, during a transition period after December 31, 1997 will be unaffected.

The provisions under which certain unused credit cap amounts are redistributed among States by a national pool are repealed after December 31, 1995. Thus, no national pool allocations will be made in 1996 and subsequent years.

Effective Date

These provisions are effective on the date of enactment.

21. Repeal tax credit for contributions to community development corporations (section 13637 of the bill)

Present Law

Taxpayers are entitled to claim a tax credit for certain contributions made to one of 20 nonprofit community development corporations [CDC's] selected by the Secretary of HUD to provide assistance in economically distressed areas. If a taxpayer makes a qualified contribution (i.e., a cash payment to a CDC, which can be made in the form of an equity investment or 10-year loan, the principal of which is to be returned to the taxpayer no sooner than after 10 years), the credit may be claimed by the taxpayer for each taxable year during the 10-year period beginning with the taxable year during which the contribution was made. The credit that may be claimed for each year is equal to 5 percent of the amount of the contribution to the CDC. Thus, during the 10-year credit period, the taxpayer may claim aggregate credit amounts totalling 50 percent of his or her contribution.[80] The aggregate amount of contributions that may be designated by any one CDC as eligible for the credit may not exceed $2 million. (Thus, a total amount of $40 million in contributions will be available for the credit with respect to all 20 selected CDC's—and the maximum credit amounts will total $20 million over the 10-year credit period.) The CDC's must use the contributions to provide employment and business opportunities to low-income residents who live in an area where the unemployment rate is not less than the national unemployment rate and the median family income does not exceed 80 percent of the median gross income of residents of the jurisdiction of the local government which includes such area.

On June 30, 1994, the Secretary of HUD announced the 20 CDC's selected to receive contributions that qualify them for the credit. The eligible CDC's are located in the following areas: (1) Atlanta, (2) Baltimore, (3) Boston, (4) Chicago, (5) Cleveland, (6) Dallas, (7) Washington, DC, (8) Los Angeles, (9) Memphis, (10) Miami, (11) Brooklyn, (12) Newark, (13) Watsonville, CA, (14) London, KY, (15) Wiscasset, ME, (16) Greenville, MS, (17) Mayville, NY, (18) Barnesboro, PA, (19) San Antonio, TX and (20) Christiansburg, VA.

Reasons for Change

The committee believes that it is not appropriate to provide more favorable tax treatment to a few nonprofit organizations (selected by HUD) than is provided to other nonprofits that are in existence (or will be created) to provide comparable employment and business opportunities in economically distressed areas.

Explanation of Provision

The bill repeals the special credit for qualified contributions to selected community development corporations.

Effective Date

The provision is effective for contributions made after the date of enactment (other than a contribution made pursuant to a legally enforceable agreement to make such contribution, if such agreement is in effect on the date of enactment).

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[80] The contribution to the CDC must be available for use by the CDC for at least 10 years, but need not meet the requirements of a "contribution or gift" for purposes of section 170. In other words, a contribution eligible for the credit may be made in the form of a 10-year loan (or other long-term investment), the principal of which is to be returned to the taxpayer after the 10-year period. However, in the case of a donation of cash made by a taxpayer to an eligible CDC, the taxpayer is allowed to claim a charitable contribution deduction (subject to other present-law rules under section 170), in addition to the special credit for qualified contributions to a selected CDC.

22. Repeal advance refunds of diesel fuel tax for diesel automobiles, vans, and light trucks (sec. 13638 of the bill and sec. 6427(g) of the code)

Present Law

Excise taxes are imposed on gasoline (11.5 cents per gallon) and diesel fuel (17.5 cents per gallon) to fund the Federal Highway Trust Fund. Before 1985, the gasoline and diesel fuel tax rates were the same. The predominate highway use of diesel fuel is by trucks. In 1984, the diesel excise tax rate was increased above the gasoline tax as the revenue offset for a reduction in the annual heavy truck use tax. Because automobiles, vans, and light trucks did not benefit from the use tax reductions, a provision was enacted allowing first purchasers of model year 1979 and later diesel-powered automobiles, vans, and light trucks a tax credit to offset this increased diesel fuel tax. The credit is $102 for automobiles, and $198 for vans and light trucks.

Reasons for Change

Changed driving patterns, and vehicles currently being marketed, have resulted in fewer diesel-powered automobiles, vans, and light trucks today than was the case when this advance refund was enacted. Additionally, the highway cost allocation study on which the refund was based is now 13 years old. The committee believes, therefore, that this present-law credit is obsolete and should be repealed.

Explanation of Provision

The tax credit for purchasers of diesel-powered automobiles and light trucks is repealed.

Effective Date

The provision is effective for vehicles purchased after December 31, 1995.

23. Treatment of substitute returns for purposes of the penalty for failure to pay taxes (sec. 13639 of the bill and sec. 6651 of the code)

Present Law

Section 6651(a)(2) provides that the IRS may assess a penalty for failure to pay tax from the due date of the return until the tax is paid. If no return is filed by the taxpayer and the IRS files a substitute return under section 6020, the tax on which the penalty is measured is considered a deficiency assessable under section 6212 or 6213, and the failure to pay penalty begins to accumulate 10 days after the IRS sends the taxpayer a notice and demand for payment of the tax.

Reasons for Change

Under the current penalty system, there is an inequity between voluntarily filed delinquent returns and substitute returns. Taxpayers who file delinquent returns must pay a failure to file penalty from the due date of the return, whereas the taxpayer who forces the IRS to utilize a substitute return is not assessed the penalty until billed by the IRS.

Explanation of Provision

The bill applies the failure to file penalty to substitute returns in the same manner as the penalty applies to delinquent filers.

Effective Date

The provision applies in the case of any return the due date for which (determined without regard to extensions) is after the date of enactment.

24. Require taxpayers to include rental value of residence in income without regard to period of rental (sec. 13640 of the bill and sec. 280A of the code)

Present Law

Gross income for purposes of the Internal Revenue Code generally includes all income from whatever source derived, including rents. The code (sec. 280A(g)) provides a *de minimis* exception to this rule where a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year. In this case, the income from such rental is not included in gross income and no deductions arising from such rental use are allowed as a deduction.

Reasons for Change

The *de minimis* exception allows certain taxpayers to exclude from income large rental payments for the short-term rental of the taxpayer's residence. The committee believes that such amounts generally should be included in income of the taxpayers.

Explanation of Provision

The bill repeals the 15-day rules of section 280A(g). The bill also provides that no reduction in basis is required if the taxpayer: First, rented the dwelling unit for less than 15 days during the taxable year and second, did not claim depreciation on the dwelling unit for the period of rental.

Effective Date

The provision applies to taxable years beginning after December 31, 1995.

25. Allow conversion of scholarship funding corporation to taxable corporation (sec. 13641 of the bill and sec. 150 of the code)

Present Law

Qualified scholarship funding corporations

Qualified scholarship funding corporations are nonprofit corporations established and operated exclusively for the purpose of acquiring student loan notes incurred under the Higher Education Act of 1965 (sec. 150(d)). Such corporations must be organized at the request of a State or political subdivision thereof. In addition, a qualified scholarship funding corporation must be required by its corporate charter and bylaws, or under State law, to devote any income (after payment of expenses, debt service and the creation of reserves for the same) to the purchase of additional student loan notes or to pay over any income to the United States.

Qualified student loan bonds

In general, State and local government bonds issued to finance private loans (e.g., student loans) are taxable private activity bonds. However, interest on qualified student loan bonds is tax exempt.

Qualified student loan bonds are obligations that are part of an issue all, or a major portion, of the proceeds of which are used, directly or indirectly, to finance loans to students who meet certain requirements. Such loans must be made under a program of general application to which the Higher Education Act of 1965 applies and with respect to which special allowance payments [SAP] under the Higher Education Act of 1965 are authorized. In addition, the program must restrict the maximum amount of loans that may be outstanding to any student and the maximum rate of interest payable on any loan, and the loans must be guaranteed by the Federal Government. Finally, the financing of loans under the program must not be limited by Federal law to the proceeds of tax-exempt bonds.

Qualified scholarship funding corporations are eligible issuers of qualified student loan bonds.

Arbitrage restrictions and rebate requirement

The Internal Revenue Code restricts the direct and indirect investment of bond proceeds in higher yielding investments and requires that profits on investments that are unrelated to the government purpose for which the bonds are issued be rebated to the United States.

These arbitrage restrictions limit, for example, the amount by which interest charged on loans to students may exceed interest paid on qualified student loan bonds. This amount generally is limited to a spread between the interest on the bonds and the interest on the acquired program obligations equal to the greater of first, 2 percentage points plus reasonable administrative costs or second, all reasonable direct costs of the loan program (including issuance costs and bad debt losses). Special allowance payments [SAP] made by the Department of Education are treated as interest on notes and, therefore, are included within the 2-percent limit.

Private foundation excess business holding restrictions

The activities and assets of private foundations are subject to certain restrictions, including the "excess business holding" limitations of section 4943. These rules limit the combined ownership of a business enterprise by a private foundation and all disqualified persons by imposing a tax on the "excess business holdings" of any private foundation. Generally, a private foundation and disqualified persons may, in the aggregate, own 20 percent of the voting stock of a functionally unrelated corporation. If third parties control the unrelated corporation, such aggregate percentage interest may be increased to 35 percent.

The excess business holding rules do not apply if a private foundation owns an interest in a "functionally-related business." A "functionally-related business" is one that is first, not an unrelated trade or business within the meaning of section 513 or second, carried on within a larger aggregate of similar activities or within a larger complex of other endeavors that are related to the foundation's exempt purposes.

Reasons for Change

Congress provided in 1993 for certain loans to students be made directly by the Federal Government. To the extent that such direct loan programs provide loans to students, loan programs such as those provided by qualified scholarship funding corporations will be reduced and possibly terminated. The committee believes that those corporations should be given an opportunity to engage in new education-related activities without jeopardizing the tax-exempt character of their debt. In addition, the committee believes that profits accumulated by those corporations may be used as seed capital for those new activities, but that those funds be dedicated for charitable purposes. Accordingly, the committee believes that the assets and liabilities of such corporations may be transferred to a taxable subsidiary in exchange for its stock so long at the corporation becomes a charitable corporation and the terms of the subsidary's stock are protect the charity's interests.

Explanation of Provision

In general

The bill provides that a nonprofit student loan funding corporation may elect to cease its status as a qualified scholarship funding corporation. If the corporation meets the requirements outlined below, such an election will not cause any bond outstanding as of the date of the issuer's election and any bond issued to refund such a bond to fail to be a qualified student loan bond. Accordingly, the interest on such bonds would remain tax-exempt to the bondholders. Once made, an election may be revoked only with the consent of the Secretary of Treasury.

Requirements

First, upon making the election, the issuer is required to transfer all of the student loan notes to another, taxable, corporation in exchange for senior stock of such corporation within a reasonable period of time after the election is made. Immediately after the transfer, the issuer, and any other issuer who made the election, is required to hold all of the senior stock of the corporation. Senior stock is stock whose rights to dividends, liquidation or redemption rights are not inferior to those of any other class of stock and that first, participates pro rata and fully in the equity value of any other common stock of the corporation, second, has the right to payments receivable in liquidation prior to any other stock in the corporation, third, upon liquidation or redemption, has a fixed right to receive the greater of (a) the fair market value of the stock at the date of liquidation or redemption or (b) the net fair market value of all assets transferred to the corporation by the issuer, and fourth, has a right to require its redemption by a date which is not 10 years after the date that the election is made.

In addition, the transferee corporation is required to assume or otherwise provide for the payment of all the qualified scholarship funding bond indebtedness of the issuer within a reasonable period after the election. To the extent permitted by law, the transferee corporation is required to assume all of the responsibilities and succeed to all of the rights of the issuer under the issuer's agreements with the Secretary of Education with respect to student loans.

Further, immediately after the transfer, the issuer (i.e., the nonprofit student loan funding corporation) is required to become a charitable organization (described in section 501(c)(3) that is exempt from tax under section 501(a)), at least 80 percent of the members of its board of directors must be independent members, and which must hold all of the senior stock of the corporation.

Consequences of election

After making the election, the issuer is not authorized to issue any new bonds. On the other hand, any bonds issued to refund such bonds must be issued by a governmental entity because a qualified scholarship funding corporation would no longer exist.

Application of restriction on excess business holdings

For purposes of the excess business holding restrictions imposed on a private foundation, the corporation to which the issuer makes the transfer is treated as a "functionally-related business" with respect to the issuer if more than 50 percent of the gross income of such corporation is derived from, or more than 50 percent of the assets (by value) of such corporation consists of, student loan notes incurred under the Higher Education Act of 1965.

Effective Date

The provision is effective on the date of enactment.

26. Apply look-through rule for purposes of characterizing certain subpart F insurance income as unrelated business taxable income (sec. 13642 of the bill and sec. 512 of the code)

Present Law

An organization that is exempt from tax by reason of code section 501(a) (e.g., a charity, business league, or qualified pension trust) is nonetheless subject to tax on its unrelated business taxable income [UBTI] (sec. 511). Unrelated business taxable income generally excludes dividend income (sec. 512(b)(1)).

Special rules apply to a tax-exempt organization described in section 501(c)(3) or (c)(4) (i.e., a charity or social welfare organization) that is engaged in commercial-type insurance activities. Such activities are treated as an unrelated trade or business and the tax-exempt organization is subject to tax on the income from such insurance activities (including investment income that might otherwise be excluded from the definition of unrelated business taxable income) under subchapter L (sec. 501(m)(2)).[81] Accordingly, a tax-exempt organization described in section 501(c)(3) or (c)(4) is generally subject to tax on its income from commercial-type insurance activities in the same manner as a taxable insurance company.

A tax-exempt organization that conducts insurance activities through a foreign corporation is not subject to U.S. tax with respect to such activities. Under the subpart F rules, the U.S. shareholders (as defined in sec. 951(b)) of a controlled foreign corporation [CFC] are required to include in income currently their shares of certain income of the CFC, whether or not such income is actually distributed to the shareholders. This current inclusion rule applies to certain insurance income of the CFC (sec. 953). However, income inclusions under subpart F have been characterized as dividends for unrelated business income tax purposes.[82] Accordingly, insurance income earned by the CFC that is includible in income currently under subpart F by the taxable U.S. shareholders of the CFC is excluded from unrelated business taxable income in the case of a shareholder that is a tax-exempt entity.

Reasons for Change

The unrelated business income tax rules are designed to prevent unfair competition by business operations that would otherwise be tax-favored due to their ownership by tax-exempt organizations. The rules applicable to certain tax-exempt organizations that conduct insurance activities directly are designed to ensure that such operations are taxed in the same manner as they would be taxed if conducted by a taxable entity. However, current law does not prevent unfair competition where operations involving the insurance of third-party risks are not conducted directly by such a tax-

[81] If the commercial-type insurance activities constitute a substantial part of the organization's activities, the organization will not be tax-exempt under section 501(c)(3) or (c)(4) (sec. 501(m)(1)).

[82] The Internal Revenue Service has concluded in private letter rulings, which are not to be used or cited as precedent, that subpart F inclusions are treated as dividends received by the U.S. shareholder (a tax-exempt entity) for purposes of computing the shareholder's UBTI (see LTRs 9407007 (November 12, 1993), 9027051 (April 13, 1990), 9024086 (March 22, 1990), 9024026 (March 15, 1990), 8922047 (March 6, 1989), 8836037 (June 14, 1988), 8819034 (February 10, 1988)). However, the IRS issued one private ruling in which it concluded that subpart F inclusions are treated as if the underlying income were realized directly by the U.S. shareholder (a tax-exempt entity) for purposes of computing the shareholder's UBTI (see LTR 9043039 (July 30, 1990)). This ruling gave no explanation for the IRS's departure from the position in its prior rulings, and the IRS reiterated in a subsequent ruling the position that subpart F inclusions are characterized as dividends for purposes of computing UBTI. Moreover, the application of the look-through rule in the ruling in question did not affect the ultimate result in the ruling because the income to which the subpart F inclusion was attributable was of a type that was excludible from UBTI. The committee believes that LTR 9043039 (July 30, 1990) is incorrect in its application of a look-through rule in characterizing income inclusions under subpart F for unrelated business income tax purposes.

exempt organization itself, but are conducted by the organization through a controlled foreign corporation that is subject to little tax relative to competing U.S. businesses.

Explanation of Provision

The bill applies a look-through rule in characterizing certain subpart F insurance income for unrelated business income tax purposes. The bill applies to amounts that constitute insurance income currently includible in gross income under the subpart F rules and that are not attributable to the insurance of risks of first, the tax-exempt organization itself, second, affiliates of the tax-exempt organization that are themselves tax-exempt, or third, employees of the tax-exempt organization or such affiliates if such insurance covers solely risks associated with the performance of services for the benefit of such organization or affiliate. Such amounts are treated as income from an unrelated trade or business to the extent that such amounts would constitute income from an unrelated trade or business if received directly by the tax-exempt organization. Deductions connected with amounts treated as unrelated business taxable income are allowed to the same extent as such deductions are allowed to a taxable entity.

Effective Date

The provision is effective for amounts includible in gross income in any taxable year beginning after December 31, 1995.

27. Intermediate sanctions for certain tax-exempt organizations (secs. 13646–13651 of the bill and sections 501, 6033, 6104, 6652, 6685 and new sections 4958, 6116, and 6716 of the code)

Present Law

Private inurement

Charities.—Section 501(c)(3) specifically conditions tax-exempt status for all organizations described in that section on the requirement that no part of the net earnings of the organization inures to the benefit of any private shareholder or individual (the so-called private inurement test).

Social welfare organizations.—A tax-exempt social welfare organization described in section 501(c)(4) must be organized on a nonprofit basis and must be operated exclusively for the promotion of social welfare. In contrast to section 501(c)(3), however, there is no specific statutory rule in section 501(c)(4) prohibiting the net earnings of a social welfare organization described in section 501(c)(4) from inuring to the benefit of a private shareholder or individual.[83]

Other organizations.—Other tax-exempt organizations, such as labor and agricultural organizations described in section 501(c)(5) and business leagues described in section 501(c)(6) are subject to the private inurement test, as a result of explicit statutory language or Treasury Department regulations.

[83] Even where no prohibited private inurement exists, however, more than incidental private benefits conferred on individuals may result in the organization not being operated “exclusively” for an exempt purpose. See, e.g., *American Campaign Academy v. Commissioner*, 92 T.C. 1053 (1989).

Sanctions for private inurement and other violations of exemption standards

Organizations described in section 501(c)(3) are classified as either public charities or private foundations. Penalty excise taxes may be imposed under the code when a public charity makes political expenditures (sec. 4955) or excessive lobbying expenditures (secs. 4911 and 4912). However, the code generally does not provide for the imposition of penalty excise taxes in cases where a 501(c)(3) public charity or a section 501(c)(4) social welfare organization engages in a transaction that results in private inurement. In such cases, the only sanction that specifically is authorized under the code is revocation of the organization's tax-exempt status. A transaction engaged in by a private foundation (but not a public charity) is subject to special penalty excise taxes under the code if the transaction is a prohibited "self-dealing" transaction (sec. 4941) or does not accomplish a charitable purpose (sec. 4945).

Filing and public disclosure rules

Tax-exempt organizations (other than churches and certain small organizations) are required to file an annual information return (form 990) with the IRS, setting forth the organization's items of gross income and expenses attributable to such income, disbursements for tax-exempt purposes, plus certain other information for the taxable year. Private foundations are required to allow public inspection at the foundation's principal office of their current annual information return. Other tax-exempt organizations, including public charities, are required to allow public inspection at the organization's principal office (and certain regional or district offices) of their annual information returns for the three most recent taxable years (sec. 6104(e)). The code also requires that tax-exempt organizations allow public inspection of the organization's application to the IRS for recognition of tax-exempt status, the IRS determination letter, and certain related documents. In addition, upon written request to the IRS, members of the general public are permitted to inspect annual information returns of tax-exempt organizations and applications for recognition of tax-exempt status (and related documents) at the National Office of the IRS in Washington, DC. A person making such a written request is notified by the IRS when the material is available for inspection at the National Office, where notes may be taken of the material open for inspection, photographs taken with the person's own equipment, or copies of such material obtained from the IRS for a fee (Treas. Reg. secs. 301.6104(a)–6 and 301.6104(b)–1).

Section 6652(c)(1)(A) provides that a tax-exempt organization that fails to file a complete and accurate form 990 is subject to a penalty of $10 for each day during which such failure continues (with a maximum penalty with respect to any one return of the lesser of $5,000 or 5 percent of the organization's gross receipts for the year). Section 6652(c)(1)(C) provides that tax-exempt organizations that fail to make certain annual returns and applications for exemption available for public inspection are subject to a penalty of $10 for each day the failure continues (with a maximum penalty with respect to any one return not to exceed $5,000, and without limitation with respect to applications). In addition, section 6685 provides a penalty for willfully failing to make an annual return or application available for public inspection of $1,000 per return or application.

Organizations that have tax-exempt status but that are not eligible to receive tax-deductible charitable contributions are required expressly to state in certain fundraising solicitations that contributions or gifts to the organization are not deductible as charitable contributions for Federal income tax purposes (sec. 6113). Penalties may be imposed on such organizations for failure to comply with this requirement (sec. 6710).

Reasons for Change

To ensure that the advantages of tax-exempt status ultimately benefit the community and not private individuals, the bill extends the present-law section 501(c)(3) private inurement prohibition to nonprofit organizations described in section 501(c)(4) and provides for intermediate sanctions that may be imposed when nonprofit organizations described in section 501(c)(3) or 501(c)(4) engage in transactions with certain insiders that result in private inurement. The bill also enhances oversight and public accountability of nonprofit organizations through additional reporting of information by nonprofit organizations to the Internal Revenue Service [IRS] and increased public access to documents filed by such organizations with the IRS.

Explanation of Provision

Extend private inurement prohibition to social welfare organizations

The bill amends section 501(c)(4) explicitly to provide that a social welfare organization or other organization described in that section is eligible for tax-exempt status only if no part of its net earnings inures to the benefit of any private shareholder or individual.[84]

Effective date.—This provision generally is effective on September 14, 1995. However, under a special transition rule, the provision does not apply to inurement occurring prior to January 1, 1997, if such inurement results from a written contract that was binding on September 13, 1995, and at all times thereafter before such inurement occurred, and the terms of which have not materially changed.

Intermediate sanctions for excess benefit transactions

The bill imposes penalty excise taxes as an intermediate sanction in cases where organizations exempt from tax under section 501(c)(3) or 501(c)(4) (other than private foundations, which are subject to a separate penalty regime under current law) engage in an "excess benefit transaction." In such cases, intermediate sanctions can be imposed on certain disqualified persons (i.e., insiders)

[84] The committee intends that the private inurement rule will not be violated solely because of an allocation or return of net margins or capital to the members of a nonprofit association or organization that operates on a cooperative basis in accordance with its incorporating statute and bylaws (substantially as in existence on the date of enactment) and was determined to be exempt from federal income tax under section 501(c)(4) prior to the date of enactment. The committee intends that such cooperative organizations will be subject to the general private inurement proscription with respect to any other type of transaction.

who improperly benefit from an excess benefit transaction and on organization managers who participate in such a transaction knowing that it is improper.

An "excess benefit transaction" is defined as: First, any transaction in which an economic benefit is provided to, or for the use of, any disqualified person if the value of the economic benefit provided directly by the organization (or indirectly through a controlled entity[85]) to such person exceeds the value of consideration (including performance of services) received by the organization for providing such benefit; and second, to the extent provided in Treasury Department regulations, any transaction in which the amount of any economic benefit provided to, or for the use of, any disqualified person is determined in whole or in part by the revenues of the organization, provided that the transaction constitutes prohibited inurement under present-law section 501(c)(3) or under section 501(c)(4), as amended. Thus, "excess benefit transactions" subject to excise taxes include transactions in which a disqualified person engages in a nonfair-market-value transaction with an organization or receives unreasonable compensation, as well as financial arrangements (to the extent provided in Treasury regulations) under which a disqualified person receives payment based on the organization's income in a transaction that violates the present-law private inurement prohibition. The committee intends that the Treasury Department will issue prompt guidance providing examples of revenue-sharing arrangements that violate the private inurement prohibition.

Existing tax-law standards apply in determining reasonableness of compensation and fair market value. Consistent with such standards, the parties to a transaction are entitled to rely on a rebuttable presumption of reasonableness with respect to a compensation arrangement with a disqualified person if such arrangement was approved by an independent board (or an independent committee authorized by the board) that: First, was composed entirely of individuals unrelated to and not subject to the control of the disqualified person(s) involved in the arrangement; second, obtained and relied upon appropriate data as to comparability (e.g., compensation levels paid by similarly situated organizations, both taxable and tax-exempt, for functionally comparable positions; the location of the organization, including the availability of similar specialties in the geographic area; independent compensation surveys by nationally recognized independent firms; or actual written offers from similar institutions competing for the services of the disqualified person); and third, adequately documented the basis for its determination (e.g., the record includes an evaluation of the individual whose compensation was being established and the basis for determining that the individual's compensation was reasonable in light of that evaluation and data).[86] If these three criteria are

[85] A tax-exempt organization cannot avoid the private inurement proscription by causing a controlled entity to engage in an excess benefit transaction. Thus, for example, if a tax-exempt organiztion causes its taxable subsidiary to pay excessive compensation to an individual who is a disqualified person with respect to the parent organization, such transaction would be in excess benefit transaction.

[86] The fact that a State or local legislative or agency body may have authorized or approved of a particular compensation package paid to a disqualified person is not determinative of the reasonableness of compensation paid for purposes of the excise tax penalties provided for by the

satisfied, penalty excise taxes could be imposed under the bill only if the IRS develops sufficient contrary evidence to rebut the probative value of the evidence put forth by the parties to the transaction (e.g., the IRS could establish that the compensation data relied upon by the parties was not for functionally comparable positions or that the disqualified person, in fact, did not substantially perform the responsibilities of such position). A similar rebuttable presumption arises with respect to the reasonableness of the valuation of property sold or otherwise transferred (or purchased) by an organization to (or from) a disqualified person if the sale or transfer (or purchase) is approved by an independent board that uses appropriate comparability data and adequately documents its determination.

The bill specifically provides that the payment of personal expenses and benefits to or for the benefit of disqualified persons, and nonfair-market-value transactions benefiting such persons, are treated as compensation only if it is clear that the organization intended and made the payments as compensation for services. In determining whether such payments or transactions are, in fact, compensation, the relevant factors include whether the appropriate decision-making body approved the transfer as compensation in accordance with established procedures and whether the organization and the recipient reported the transfer (except in the case of nontaxable fringe benefits) as compensation on the relevant forms (i.e., the organization's form 990, the form W–2 provided by the organization to the recipient, the recipient's form 1040, and other required returns).[87]

"Disqualified person" means any person who is (1) an "organization manager" (meaning any officer, director, or trustee of an organization or any individual having powers or responsibilities similar to those of officers, directors, or trustees) or (2) any individual (other than an organization manager) who is in a position to exercise substantial influence over the affairs of the organization.[88] In addition, "disqualified persons" include certain family members and 35-percent owned entities[89] of any person described in (1) or (2) above, as well as any person who was a disqualified person at any time during the 5-year period prior to the transaction at issue.

A disqualified person who benefits from an excess benefit transaction is subject to a first-tier penalty tax equal to 25 percent of the amount of the excess benefit (i.e., the amount by which a trans-

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proposal. Similarly, such authorization or approval is not determinative of whether a revenue sharing arrangement violates the private inurement proscription.

[87] With the exception of nontaxable fringe benefits described in present-law section 132 and other types of nontaxable transfers such as employer-provided health benefits and contributions to qualified pension plans, an organization cannot demonstrate at the time of an IRS audit that it clearly indicated its intent to treat economic benefits provided to a disqualified person as compensation for services merely by claiming that such benefits may be viewed as part of the disqualified person's total compensation package. Rather, the organization must provide substantiation that is contemporaneous with the transfer of economic benefits at issue.

[88] The committee intends that a person could be in a position to exercise substantial influence over a tax-exempt organization despite the fact that such person is not an employee of (and receives no compensation directly from) a tax-exempt organization but is formally an employee of (and is directly compensated by) a subsidiary—even a taxable subsidiary—controlled by the parent tax-exempt organization.

[89] Family members are determined under present-law section 4946(d), except that such members also include siblings (whether by whole or half blood) of the individual, and spouses of such siblings. "35-percent owned entities" mean corporations, partnerships, and trusts or estates in which a disqualified person owns more than 35 percent of the combined voting power, profits interest, or beneficial interest.

action differs from fair market value, the amount of compensation exceeding reasonable compensation, or the amount of a prohibited transaction based on the organization's gross or net income). Organization managers who participate in an excess benefit transaction knowing that it is an improper transaction are subject to a first-tier penalty tax of 10 percent of the amount of the excess benefit (subject to a maximum penalty of $10,000).

Additional, second-tier taxes could be imposed on a disqualified person if there is no correction of the excess benefit transaction within a specified time period.[90] In such cases, the disqualified person would be subject to a penalty tax equal to 200 percent of the amount of excess benefit. For this purpose, the term "correction" means undoing the excess benefit to the extent possible and, where fully undoing the excess benefit is not possible, taking such additional corrective action as is prescribed by Treasury regulations.

The intermediate sanctions for "excess benefit transactions" could be imposed by the IRS in lieu of (or in addition to) revocation of an organization's tax-exempt status.[91] If more than one disqualified person or manager is liable for a penalty excise tax, then all such persons would be jointly and severally liable for such tax. As under current law, a 3-year statute of limitations applies, except in the case of fraud (sec. 6501). Under the bill, the IRS has authority to abate the excise tax penalty (under present-law section 4962) if it is established that the violation was due to reasonable cause and not due to willful neglect and the transaction at issue was corrected within the specified period.

To prevent an organization from avoiding the penalty excise taxes through termination of its tax-exempt status, the bill also imposes a tax on tax-exempt organizations that terminate their tax-exempt status. The amount of the tax equals the lesser of first, the aggregate tax benefits that an organization can substantiate that it has received from its exemption from tax under code section 501(a), or second, the value of the net assets of such organization.[92] The Secretary of the Treasury is permitted to abate all or a portion of the tax if a tax-exempt organization distributes all of its net assets to one or more charitable organizations described in code section 501(c)(3) that have been in existence for a continuous 5-year period. Tax-exempt organizations that are described in code section 501(c)(4) are permitted to distribute their net assets to one or more organizations described in code section 501(c)(3) or 501(c)(4) that have been in existence for a continuous 5-year period. An organization is permitted to terminate its exempt status only if it has paid the tax (or any portion thereof that is not abated) and the organization has notified the Secretary of its intent to terminate its exempt

[90] Correction must be made on or prior to the earlier of first, the date of mailing of a notice of deficiency under section 6212 with respect to the first-tier penalty tax imposed on the disqualified person, or second, the date on which such tax is assessed.

[91] The committee generally expects that the intermediate sanctions would be the sole sanction imposed in those cases in which the excess benefit does not rise to a level where it calls into question whether, on the whole, the organization functions as a charitable or other tax-exempt organization. In practice, revocation of tax-exempt status, with or without the imposition of excise taxes, would occur only when the organization no longer operates for a charitable or other tax-exempt purpose.

[92] In calculating these amounts, rules similar to the rules applicable to private foundations set forth in code section 507(d),(e), and (f) apply.

status (or the Secretary has made a final determination that such status has terminated).

Effective date.—The provision generally applies to excess benefit transactions occurring on or after September 14, 1995. The provision does not apply, however, to any transaction pursuant to a written contract for the performance of personal services which was binding on September 13, 1995, and at all times thereafter before such transaction occurred, and the terms of which have not materially changed.

Additional filing and public disclosure rules

Reporting of identity of certain disqualified persons, excise tax penalties and excess benefit transactions.—Tax-exempt organizations are required to disclose on their form 990 the names of each disqualified person who received an economic benefit during the taxable year and such other information as may be required by the Secretary of the Treasury. In addition, exempt organizations are required to disclose on their form 990 such information as the Secretary of the Treasury may require with respect to "excess benefit transactions" (described above) and any other excise tax penalties paid during the year under present-law sections 4911 (excess lobbying expenditures), 4912 (disqualifying lobbying expenditures), or 4955 (political expenditures), including the amount of the excise tax penalties paid with respect to such transactions, the nature of the activity, and the parties involved.[93]

Furnishing copies of documents.—The bill also provides that a tax-exempt organization that is subject to the public inspection rules of present-law section 6104(e)(1) (i.e., any tax-exempt organization, other than a private foundation, that files a form 990) is required to comply with requests from individuals who seek a copy of the organization's form 990 or the organization's application for recognition of tax-exempt status and certain related documents. Upon such a request, the organization is required to supply copies without charge other than a reasonable fee for reproduction and mailing costs. If so requested, copies must be supplied of the forms 990 for any of the organization's three most recent taxable years. If the request for copies is made in person, then the organization must immediately provide such copies. If the request for copies is made other than in person (e.g., by mail or telephone), then copies must be provided within 30 days. However, an organization could be relieved, for a limited period of time, of its obligation to provide copies if the Secretary of the Treasury determined, upon application by the organization, that the organization was subject to a harassment campaign such that waiver of the obligation to provide copies would be in the public interest.

Advertisements and solicitations.—The bill further requires that written advertisements or solicitations made by (or on behalf of) a tax-exempt organization that is subject to the public inspection rules of present-law section 6104(e)(1) must contain an express

[93] The penalties applicable to failure to file a timely, complete, and accurate return apply for failure to comply with these requirements. In addition, the committee intends that the IRS implement its plan to require additional form 990 reporting regarding first, changes to the governing board or the certified accounting firm, second, such information as the Secretary may require relating to professional fundraising fees paid by the organization, and third, aggregate payments (by related entities) in excess of $100,000 to the highest-paid employees.

statement, in a conspicuous and easily recognizable format, that the organization's forms 990 are available to individuals upon request.[94] Failure to make the required disclosure in an advertisement or solicitation would subject the organization to a penalty of $100 for each day on which the failure occurred. However, no penalty may be imposed with respect to a failure if it is shown that such failure was due to reasonable cause. The bill generally limits the maximum penalty to $10,000 for all such failures by an organization during any calendar year.[95]

In addition, the bill requires entities that do not have Federal tax-exempt status but that describe themselves in advertisements or solicitations as "nonprofit" to disclose in an express statement that contributions to the entity are not deductible as charitable contributions for Federal income tax purposes. Failure to make the disclosure would subject the entity to penalties under section 6716.

Electronic dissemination of information.—The bill requires the Treasury Department to provide copies of annual returns and applications for recognition of tax-exempt status filed by exempt organizations to any organization that agrees to accept broad categories of such returns and applications and to provide electronic access to all such documents on an electronic network to the general public. Such returns and applications must be provided free of charge to organizations that do not charge a fee for public access; if an organization charges a fee for public electronic access, the Treasury Department is allowed to charge a reasonable fee for reproduction and mailing costs.

Penalties for failure to file timely or complete return.—The section 6652(c)(1)(A) penalty imposed on a tax-exempt organization that either fails to file a form 990 in a timely manner or fails to include all required information on a form 990 is increased from the present-law level of $10 for each day the failure continues (with a maximum penalty with respect to any one return of the lesser of $5,000 or 5 percent of the organization's gross receipts) to $20 for each day the failure continues (with a maximum penalty with respect to any one return of the lesser of $10,000 or 5 percent of the organization's gross receipts). Under the bill, organizations with annual gross receipts exceeding $1 million are subject to a penalty under section 6652(c)(1)(A) of $100 for each day the failure continues (with a maximum penalty with respect to any one return of $50,000). As under present law, no penalty may be imposed under section 6652(c)(1)(A) if it were shown that the failure to file a complete return was due to reasonable cause (sec. 6652(c)(3)).

Penalties for failure to allow public inspection.—The section 6652(c)(1)(C) penalty imposed on tax-exempt organizations that fail to allow public inspection of certain annual returns or applications for exemption is increased from the present-law level of $10 per day (with a maximum of $5,000) to $20 per day (with a maximum of $10,000). In addition, the section 6685 penalty for willful failure

[94] The committee intends that the Department of Treasury will provide prompt guidance on this requirement.

[95] However, if a failure to comply with the disclosure requirement for solicitations is due to intentional disregard, then the $10,000 limitation does not apply, and the penalty for each day on which such an intentional failure occurred is the greater of first, $1,000 or second, 50 percent of the aggregate cost of the solicitations which occurred on such day and with respect to which there was intentional disregard of the disclosure requirement.

to allow public inspections is increased from the present-law level of $1,000 to $5,000.

Treasury Department studies.—The bill directs the Treasury Department to: First, study and make recommendations regarding application of an explicit statutory private inurement prohibition, and intermediate sanctions, to other tax-exempt organizations; second, study and make recommendations to the Congress on whether certain State officers, such as the attorney general and other officials charged with overseeing public charities, should be provided with additional access to Federal tax information beyond that authorized under section 6103; and third, review the form 990 reporting requirements to ensure the form's utility to IRS and the public and to reduce unnecessary reporting burdens.

Effective dates.—The filing and disclosure provisions governing tax-exempt organizations generally take effect on January 1, 1996 (or, if later, 90 days after enactment). However, the provisions regarding the reporting on annual returns of excise tax penalties and excess benefit transactions is effective for returns with respect to taxable years beginning on or after January 1, 1995. The requirement that the Treasury Department provide copies of annual returns and applications for recognition of tax-exempt status for electronic dissemination applies to returns and applications filed on or after January 1, 1996; it applies to returns and applications filed prior to January 1, 1996, only to the extent provided by the Secretary of the Treasury. The Treasury Department studies are required to be transmitted to Congress by January 1, 1997.

SUBTITLE G. REFORM OF THE EARNED INCOME TAX CREDIT

(Secs. 13701–13703 of the bill and secs. 32 and 6213(g)(2) of the code)

Present Law

In general

Under present law, certain eligible low-income workers are entitled to claim a refundable earned income tax credit [EITC]. The amount of the credit an eligible taxpayer may claim depends upon whether the taxpayer has one, more than one, or no qualifying children and is determined by multiplying the credit rate by the taxpayer's earned income up to an earned income threshold. The maximum amount of the credit is the product of the credit rate and the earned income threshold. For taxpayers with earned income (or adjusted gross income [AGI], if greater) in excess of the phaseout threshold, the credit amount is reduced by the phaseout rate multiplied by the amount of earned income (or AGI, if greater) in excess of the phaseout threshold. For taxpayers with earned income (or AGI, if greater) in excess of the phaseout limit, no credit is allowed.

As enacted in Public Law 104–7 (H.R. 831), for taxable years beginning after December 31, 1995, a taxpayer is not eligible for the EITC if the aggregate amount of "disqualified income" of the taxpayer for the taxable year exceeds $2,350. Disqualified income is the sum of:

(1) interest (taxable and tax-exempt),

(2) dividends, and

(3) net rent and royalty income (if greater than zero).

The parameters for the EITC depend upon the number of qualifying children the taxpayer claims. For 1995 the parameters are as follows:

	Two or more qualifying children—	One qualifying child—	No qualifying children—
Credit rate (percent)	36.00	34.00	7.65
Phaseout rate (percent)	20.22	15.98	7.65
Earned income threshold	$8,640	$6,160	$4,100
Maximum credit	$3,110	$2,094	$314
Phaseout threshold	$11,290	$11,290	$5,130
Phaseout limit	$26,673	$24,396	$9,230

For 1996, the parameters are given in the following table (dollar amounts are projections expressed in 1996 dollars):

	Two or more qualifying children—	One qualifying child—	No qualifying children—
Credit rate (percent)	40.00	34.00	7.65
Phaseout rate (percent)	21.06	15.98	7.65
Earned income threshold	$8,910	$6,340	$4,230
Maximum credit	$3,564	$2,156	$324
Phaseout threshold	$11,630	$11,630	$5,290
Phaseout limit	$28,553	$25,119	$9,520

For years after 1996, the credit rates and the phaseout rates will be the same as in the preceding table. The earned income threshold and the phaseout threshold are indexed for inflation; because the phaseout limit depends on those amounts as well as the phaseout rate and the credit rate, the phaseout limit will also increase if there is inflation.

In order to claim the EITC, a taxpayer must either have a qualifying child or meet other requirements. A qualifying child must meet a relationship test, an age test, an identification test, and a residence test.

In order to claim the EITC without a qualifying child, a taxpayer must not be a dependent and must be over age 24 and under age 65. In addition, the taxpayer's principal place of abode must be located in the United States for more than one-half of the taxable year. For purposes of this test, a member of the Armed Forces stationed outside the United States on extended active duty is considered to be maintaining a principal place of abode in the United States.

To satisfy the identification test, taxpayers must include on their tax return the name and age of each qualifying child. For returns filed with respect to tax year 1995, taxpayers must provide a taxpayer identification number [TIN] for all qualifying children who were born on or before October 31, 1995. For returns filed with respect to tax year 1996, taxpayers must provide TIN's for all qualifying children born on or before November 30, 1996. For returns filed with respect to tax year 1997 and all subsequent years, taxpayers must provide TIN's for all qualifying children, regardless of their age. A taxpayer's TIN is generally that taxpayer's Social Security number. Some taxpayers are exempt from Social Security taxes because of their religious beliefs. These taxpayers do not have a Social Security number; instead, the Internal Revenue Service [IRS] administratively assigns them a taxpayer identification number.

Mathematical errors

The IRS may summarily assess additional tax due as a result of a mathematical error without sending the taxpayer a notice of deficiency and giving the taxpayer an opportunity to petition the Tax Court. Where the IRS uses the summary assessment procedure for mathematical or clerical errors, the taxpayer must be given an explanation of the asserted error and a period of 60 days to request that the IRS abate its assessment. The IRS may not proceed to collect the amount of the assessment until the taxpayer has agreed to it or has allowed the 60-day period for objecting to expire. If the taxpayer files a request for abatement of the assessment specified in the notice, the IRS must abate the assessment. Any reassessment of the abated amount is subject to the ordinary deficiency procedures. The request for abatement of the assessment is the only procedure a taxpayer may use prior to paying the assessed amount in order to contest an assessment arising out of a mathematical or clerical error. Once the assessment is satisfied, however, the taxpayer may file a claim for refund if he believes the assessment was made in error.

Reasons for Change

The committee is concerned that the EITC is not well-targeted to the neediest individuals. Under present law, in 1996 taxpayers with two or more qualifying children would be able to claim the EITC even if they have AGI as high as $28,553. Taxpayers with one qualifying child would be able to claim the EITC even if they have AGI as high as $25,119. The committee believes that taxpayers with such incomes do not need a tax credit designed to benefit the poor. Therefore, the committee increased the rates at which the EITC is phased out for taxpayers with higher incomes.

Another way to improve the targeting of the credit is by expanding the definition of income used in phasing out the EITC. The committee believes that the definition of AGI used currently in phasing out the EITC is too narrow and disregards other components of ability-to-pay. Untaxed Social Security benefits and untaxed distributions from pensions, annuities and individual retirement arrangements increase individuals' ability-to-pay and reduce the need for a tax credit.

From the inception of the EITC in 1975 through 1993, the EITC was only available to taxpayers with qualifying children. A provision in the Omnibus Budget Reconciliation Act of 1993 extended the EITC to certain taxpayers without qualifying children, for taxable years beginning after December 31, 1993. The committee believes that the EITC should be targeted to taxpayers with qualifying children, as was the case for the first 19 years of the credit.

Finally, the committee does not believe that individuals who are not authorized to work in the United States should be able to claim the EITC. To enforce the requirement that EITC claimants and their qualifying children have proper Social Security numbers and to insure that EITC claimants have paid self-employment taxes on any self-employment income used to qualify for the credit, the committee believes the Internal Revenue Service should be able to use the streamlined procedures it currently uses for mathematical and clerical errors.

Explanation of Provision

Modify definition of adjusted gross income used for phasing out the credit

The bill modifies the definition of AGI used for phasing out the credit by including the following items:

(1) Social Security benefits not subject to income tax, and

(2) nontaxable distributions from pensions, annuities, and individual retirement arrangements (but only if not rolled over into similar vehicles during the applicable rollover period).

Deny eligibility for individuals without qualifying children

In order to claim the EITC, a taxpayer must have a qualifying child.

Increase phaseout rates

The phaseout rate of the EITC is increased to 23 percent for taxpayers with two or more qualifying children and to 18 percent for taxpayers with one qualifying child. With these changes, the parameters of the credit for 1996 will be as follows:

	Two or more qualifying children—	One qualifying child—
Credit rate (percent)	40.00	34.00
Phaseout rate (percent)	23.00	18.00
Earned income threshold	$8,910	$6,340
Maximum credit	$3,564	$2,156
Phaseout threshold	$11,630	$11,630
Phaseout limit	$27,126	$23,608

For years after 1996, the credit rates and the phaseout rates will be the same as in the preceding table. The dollar values will continue to be indexed, as under present law.

Deny credit to individuals not authorized to be employed in the United States

Under the bill, taxpayers are not eligible for the EITC if they do not include their taxpayer identification number (and, if married, their spouse's taxpayer identification number) on their tax return. Solely for these purposes and for purposes of the present-law identification test for a qualifying child, a taxpayer identification number is defined as a Social Security number issued to an individual by the Social Security Administration other than a number issued under section 205(c)(2)(B)(i)(II) (or that portion of sec. 205(c)(2)(B)(i)(III) relating to it) of the Social Security Act (regarding the issuance of a number to an individual applying for or receiving Federally funded benefits). Thus, if an individual obtains a Social Security number solely because that individual is an applicant for, or a recipient of, Federally funded benefits, the individual is ineligible to claim the EITC.

Use mathematical error procedures for certain omissions

If a taxpayer fails to provide a correct taxpayer identification number, such omission will be treated as a mathematical or clerical error. If a taxpayer who claims the EITC with respect to net earnings from self-employment fails to pay the proper amount of self-employment tax on such net earnings, the failure will be treated as a mathematical or clerical error. Thus, any notification that the taxpayer owes additional tax because of these omissions will not be treated as a notice of deficiency.

Effective Date

The provision is effective for taxable years beginning after December 31, 1995.

SUBTITLE H. INCREASE IN THE PUBLIC DEBT LIMIT

(Sec. 13801 of the bill)

Present Law

The statutory limit on the public debt currently is $4.9 trillion. It was set at this level in Public Law 103–66, enacted into law on August 10, 1993. It is projected that the current debt limit will be reached before the end of 1995.

Reasons for Change

When the current debt limit is reached, the Treasury will be unable to meet the Federal Government's financial obligations and to manage the Federal debt effectively.

The committee believes it is imperative to increase the debt limit on a permanent basis to facilitate the smooth functioning of the Federal Government and to prevent any disruption of financial markets.

Explanation of Provision

The bill increases the statutory limit on the public debt to $5.5 trillion. The new debt limit has no expiration date.

Effective Date

The provision is effective on the date of enactment.

SUBTITLE I. COAL INDUSTRY RETIREE HEALTH EQUITY

(Sec. 13901 of the bill and secs. 9701, 9702, 9704, and 9706 of the code)

Present Law

The financing of retiree health benefits previously provided by the United Mine Workers of America [UMWA] 1950 and 1974 Benefit Funds was substantially revised by the Energy Policy Act of 1992 (H.R. 776, Public Law 104–486), enacted October 2, 1992. The relevant provisions, contained in the Coal Industry Retiree Health Benefit Act of 1992 (the Coal Act), created two new UMWA retiree health benefit funds and completely changed the financing mechanism. The two funds, known as the UMWA Combined Benefit Fund and the UMWA 1992 Benefit Plan, service beneficiaries who retired on or before September 30, 1994. No provision was made for employees who retired or will retire after September 30, 1994. Future retirees will remain dependent on the provisions of future collective bargaining agreements.

Under the Coal Act, which supersedes the retiree health benefits financing provisions of the 1988 National Bituminous Coal Wage Agreement [NBCWA], a company is charged an insurance premium based on the number of beneficiaries assigned to the company in its role as the retiree's "last signatory employer." Under what are referred to as the "super-reachback" provisions of the Coal Act, companies responsible for paying premiums include any company that had signed any NBCWA since 1946 or any related company as defined under the Act. To cover the costs associated with beneficiaries who cannot be assigned, up to $70 million per year is transferred into the Combined Fund. The first three transfers came from the surplus in the UMWA 1950 Pension Fund. Subsequent transfers will be made from the interest earnings of the Federal Abandoned Mine Reclamation Fund. If costs for unassigned beneficiaries exceed the annual transfer, they can be allocated to the signatory and reachback companies in proportion to their share of assigned beneficiaries.

Reasons for Change

Absent the provisions of the Coal Act, the 1988 signatory companies would be paying 100 percent of the expenses of the UMWA retiree health benefit funds. Because of the Coal Act, the 1988 signatories will contribute approximately 38 percent of the income of the Combined Fund this year. (Premiums paid by the reachback companies will account for approximately 24 percent, the transfer from the UMWA Pension Fund 32 percent, and the investment income of the accumulated assets of the Fund 6 percent.)

Many companies left the bituminous coal business and the bargaining agreement under the accepted terms of the agreement, at a time when the health benefit funds were not in financial difficulty. Now, decades later, they are held responsible for contributing.

Companies that paid a withdrawal liability under the 1988 bargaining agreement are not able to claim a credit for any portion of that payment when they make payments required by the Coal Act.

Some companies sold their coal operations at a reduced price in exchange for passing along full responsibility for retiree health benefits to the new owner.

Explanation of Provision

The bill returns responsibility for funding the retiree health benefits of the 1988 agreement to the 1988 signatories by exempting from the Coal Act's provisions reachback companies and operators who made withdrawal liability payments under the terms of the 1988 agreement. Beneficiaries allocated to these reachback companies and operators are reallocated to the unassigned pool and their benefits will be financed according to the current provisions of the Coal Act.

Effective Date

The provision shall apply to plan years beginning after September 30, 1995.

TITLE XIV. COMMITTEE ON WAYS AND MEANS—TAX SIMPLIFICATION

SUBTITLE A. PROVISIONS RELATING TO INDIVIDUALS

1. Provisions relating to rollover of gain on sale of principal residence (secs. 14101–14102 of the bill and sec. 1034 of the code)

Present Law

No gain is recognized on the sale of a principal residence if a new residence at least equal in cost to the sales price of the old residence is purchased and used by the taxpayer as his or her principal residence within a specified period of time (sec. 1034). This replacement period generally begins 2 years before and ends 2 years after the date of sale of the old residence. The basis of the replacement residence is reduced by the amount of any gain not recognized on the sale of the old residence by reason of section 1034.

In general, nonrecognition treatment is available only once during any 2-year period. In addition, if the taxpayer purchases more than one residence during the replacement period and such residences are each used as the taxpayer's principal residence within 2 years after the date of sale of the old residence, only the last residence so used is treated as the replacement residence.

Special rules apply, however, if residences are sold in order to relocate for employment reasons. First, the number of times nonrecognition treatment is available during a 2-year period is not limited. Second, if a residence is sold within 2 years after the sale of the old residence, the residence sold is treated as the last residence used by the taxpayer and thus as the only replacement residence.

The determination whether property is used by a taxpayer as a principal residence depends upon all the facts and circumstances in each case, including the good faith of the taxpayer. No safe harbor is provided for sales of principal residences incident to divorce or marital separation.

Reasons for Change

The committee believes that the rollover provision governing the sale of a principal residence is unnecessarily complex, in part due to the different set of rules that applies depending on whether the sale is work-related. The bill simplifies the rollover provision by applying only one set of rules to the sale of a principal residence regardless of whether the sale is work-related.

Further, in the case of a divorce or marital separation, the determination of principal residence for one or both spouses may be unduly complex for both the taxpayer and the Internal Revenue Service. The creation of a safe-harbor rule for certain sales pursuant to a divorce or marital separation will ease administration of the law while still preserving the policy that the rollover is available only for the sale of an individual's principal residence.

Explanation of Provisions

Multiple rollovers

Under the bill, gain is rolled over from one residence to another residence in the order the residences are purchased and used, regardless of the taxpayer's reasons for the sale of the old residence. In addition, gain may be rolled over more than once within a 2-year period. Thus, the rules that formerly applied only if a taxpayer sold his residence in order to relocate for employment purposes will apply in all cases. As under present law, the basis of each succeeding residence is reduced by the amount of gain not recognized on the sale of the prior residence.

Rollovers in the case of divorce or separation

The bill provides a safe harbor in the determination of principal residence in certain cases incident to divorce or marital separation. Specifically, the bill provides that a residence is treated as the taxpayer's principal residence at the time of sale if first, the residence is sold pursuant to a divorce or marital separation and second, the taxpayer used such residence as his or her principal residence at any time during the 2-year period ending on the date of sale.

Effective Date

The provisions apply to sales of old residences (within the meaning of sec. 1034) after the date of enactment.

2. One-time exclusion of gain from sale of principal residence for certain spouses (sec. 14103 of the bill and sec. 121 of the code)

Present Law

In general, a taxpayer may exclude from gross income up to $125,000 of gain from the sale or exchange of a principal residence if the taxpayer first, has attained age 55 before the sale, and second, has used the residence as a principal residence for 3 or more years of the 5 years preceding the sale. This election is allowed only once in a lifetime unless all previous elections are revoked. For these purposes, sales on or before July 26, 1978 are not counted against the once in a lifetime limit.

Reasons for Change

The committee believes that present law constitutes a trap for the unwary which needs to be corrected. Under present law, a well informed individual may make a section 121 election immediately before marriage to another individual (who has a section 121 election in effect) to exclude up to $125,000 of gain on a principal residence owned before marriage. However, a less knowledgeable, but otherwise similarly situated individual, who does not make the election before marriage to another individual who has a section 121 election in effect is denied the $125,000 exclusion. The committee believes that under limited circumstances the $125,000 exclusion should be made available to such an individual.

Explanation of Provision

The bill allows an exclusion to an individual who otherwise qualifies for an exclusion under section 121 of the code but for a marriage to a spouse with an existing election in effect. The exclusion will only be available if the individual held the property which is the subject of the exclusion for at least 3 years prior to marrying the spouse with the existing election.

Effective Date

The bill is effective for sales or exchanges after September 13, 1995.

3. Payment of taxes by commercially acceptable means (sec. 14111 of the bill and sec. 6311 of the code)

Present Law

Payment of taxes may be made by checks or money orders, to the extent and under the conditions provided by regulations.

Reasons for Change

Additional payment mechanisms (such as credit cards, debit cards, and charge cards) have become commonly used and reliable forms of payment. Some taxpayers may find paying taxes by these mechanisms more convenient than paying by check or money order.

Explanation of Provision

In general

The Internal Revenue Service [IRS] is engaged in a long-term modernization of its information systems, the Tax Systems Modernization [TSM] Program. This modernization is intended to address deficiencies in the current IRS information systems and to plan effectively for future information system needs and requirements. The systems changes are designed to reduce the burden on taxpayers, generate additional revenue through improved voluntary compliance, and achieve productivity gains throughout the IRS. One key element of this program is electronic filing of tax returns.

At the present time, increasing reliance is being placed upon electronic funds transfers for payment of obligations. In light of this, the IRS seeks to integrate these payment methods in its TSM program, including electronic filing of returns, as well as into its traditional collection functions. The bill allows the IRS to accept payment by any commercially acceptable means that the Secretary deems appropriate, to the extent and under the conditions provided in Treasury regulations. This will include, for example, electronic funds transfers, including those arising from credit cards, debit cards, and charge cards.

The IRS contemplates that it will proceed to negotiate contracts to implement this provision with one or more private sector credit and debit card systems. The bill provides that in no event will the

Federal Government pay any fees with respect to any such contracts.

Billing error resolution

In the course of processing these transactions, it will be necessary to resolve billing errors and other disputes. The Internal Revenue Code contains mechanisms for the determination of tax liability, defenses and other taxpayer protections, and the resolution of disputes with respect to those liabilities. The Truth-in-Lending Act contains provisions for determination of credit card liabilities, defenses and other consumer protections, and the resolution of disputes with respect to these liabilities.

The bill excludes credit card, debit card, and charge card issuers and processing mechanisms from the resolution of tax liability, but makes IRS subject to the truth-in-lending provisions insofar as those provisions impose obligations and responsibilities with regard to the "billing error" resolution process. It is not intended that consumers obtain additional ways to dispute their tax liabilities under the truth-in-lending provisions.

The bill also specifically includes the use of debit cards in this provision and provides that the corresponding defenses and "billing error" provisions of the Electronic Fund Transfer Act will apply in a similar manner.

The bill adds new section 6311(d)(3) to the code. This section describes the circumstances under which section 161 of the Truth-in-Lending Act [TILA] and section 908 of the Electronic Fund Transfer Act [EFTA] apply to disputes that may arise in connection with payments of taxes made by credit card or debit card. Subsections (A) through (C) recognize that "billing errors" relating to the credit card account, such as an error arising from a credit card transaction posted to a cardholder's account without the cardholder's authorization, an amount posted to the wrong cardholder's account, or an incorrect amount posted to a cardholder's account as a result of a computational error or numerical transposition, are governed by the billing error provisions of section 161 of TILA. Similarly, subsections 6311(d)(3)(A)–(C) provide that errors such as those described above which arise in connection with payments of internal revenue taxes made by debit card, are governed by section 908 of EFTA.

The Internal Revenue Code provides that refunds are only authorized to be paid to the person who made the overpayment (generally the taxpayer). Subsection 6311(d)(3)(E), however, provides that where a taxpayer is entitled to receive funds as a result of the correction of a billing error made under section 161 of TILA in connection with a credit card transaction, or under section 908 of EFTA in connection with a debit card transaction, the IRS is authorized to utilize the appropriate credit card or debit card system to initiate a credit to the taxpayer's credit card or debit card account. The IRS may, therefore, provide such funds through the taxpayer's credit card or debit card account rather than directly to the taxpayer.

On the other hand, subsections 6311(d)(3)(A)–(C) provide that any alleged error or dispute asserted by a taxpayer concerning the merits of the taxpayer's underlying tax liability or tax return is governed solely by existing tax laws, and is not subject to section 161 or section 170 of TILA, section 908 of EFTA, or any similar provisions of State law. Absent the exclusion from section 170 of TILA, in a collection action brought against the cardholder by the card issuer the cardholder might otherwise assert as a defense that the IRS had incorrectly computed his tax liability. A collection action initiated by a credit card issuer against the taxpayer/cardholder will be an inappropriate vehicle for the determination of a taxpayer's tax liability, especially since the United States will not be a party to such an action.

Similarly, without the exclusion from section 161 of TILA and section 908 of EFTA, a taxpayer could contest the merits of his tax liability by putting the charge which appears on the credit card bill in dispute. Pursuant to TILA or EFTA, the taxpayer's card issuer will have to investigate the dispute, thereby finding itself in the middle of a dispute between the IRS and the taxpayer. It is believed that it is improper to attempt to resolve tax disputes through the billing process. It is also noted that the taxpayer retains the traditional, existing remedies for resolving tax disputes, such as resolving the dispute administratively with the IRS, filing a petition with the Tax Court after receiving a statutory notice of deficiency, or paying the disputed tax and filing a claim for refund (and subsequently filing a refund suit if the claim is denied or not acted upon).

Creditor status

The TILA imposes various responsibilities and obligations on creditors. Although the definition of the term "creditor" set forth in 15 U.S.C. sec. 1602 is limited, and will generally not include the IRS, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card are, pursuant to 15 U.S.C. sec. 1602(f), creditors.

In addition, 12 CFR sec. 226.12(e) provides that the creditor must transmit a credit statement to the card issuer within 7 business days from accepting the return or forgiving the debt. There is a concern that the response deadlines otherwise imposed by 12 CFR sec. 226.12(e), if applicable, will be difficult for the IRS to comply with (given the volume of payments the IRS is likely to receive in peak periods). This could subject the IRS to unwarranted damage actions. Consequently, the bill generally provides an exception to creditor status for the IRS.

Privacy protections

The bill also addresses privacy questions that arise from the IRS' participation in credit card processing systems. It is believed that taxpayers expect that the maximum possible protection of privacy will be accorded any transactions they have with the IRS. Accordingly, the bill provides the greatest possible protection of taxpayers' privacy that is consistent with developing and operating an efficient tax administration system. It is expected that the principle will be fully observed in the implementation of this provision.

A key privacy issue is the use and redisclosure of tax information by financial institutions for purposes unrelated to the processing of credit card charges, i.e., marketing and related uses. To accept credit card charges by taxpayers, the IRS will have to disclose tax information to financial institutions to obtain payment and to resolve billing disputes. To obtain payment, the IRS will have to disclose, at a minimum, information on the "credit slip," i.e., the dollar amount of the payment and the taxpayer's credit card number.

The resolution of billing disputes may require the disclosure of additional tax information to financial institutions. In most cases, providing a copy of the credit slip and verifying the transaction amount will be sufficient. Conceivably, financial institutions could require some information regarding the underlying liability even where the dispute concerns a "billing dispute" matter. This additional information will not necessarily be shared as widely as the initial payment data. In lieu of disclosing further information, the IRS may elect to allow disputed amounts to be charged back to the IRS and to reinstate the corresponding tax liability.

Despite the language in most cardholder agreements that permits redisclosure of credit card transaction information, the public may be largely unaware of how widely that information is shared. For example, some financial institutions may share credit, payment, and purchase information with private credit bureaus, who, in turn, may sell this information to direct mail marketers, and others. Without use and redisclosure restrictions, taxpayers may discover that some traditionally confidential tax information might be widely disseminated to direct mail marketers and others.

It is intended that credit or debit card transaction information will generally be restricted to those uses necessary to process payments and resolve billing errors, as well as other purposes that are specified in the statute. The bill directs the Secretary to issue published procedures on what constitutes authorized uses and disclosures. It is anticipated that the Secretary's published procedures will prohibit the use of transaction information for marketing tax-related services by the issuer or any marketing that targets only those who use their credit card to pay their taxes. It is also anticipated that the published procedures will prohibit the sale of transaction information to a third party.

Effective Date

The provision is effective 9 months after the date of enactment. The IRS may, in this interim period, conduct internal tests and negotiate with card issuers, but may not accept credit or debit cards for payment of tax liability.

4. Simplified foreign tax credit limitation for individuals (sec. 14112 of the bill and sec. 904 of the code)

Present Law

In order to compute the foreign tax credit, a taxpayer computes foreign source taxable income and foreign taxes paid in each of the applicable separate foreign tax credit limitation categories. In the case of an individual, this requires the filing of IRS form 1116, designed to elicit sufficient information to perform the necessary calculations.

In many cases, individual taxpayers who are eligible to credit foreign taxes may have only a modest amount of foreign source gross income, all of which is income from investments (e.g., dividends from a foreign corporation subject to foreign withholding taxes or dividends from a domestic mutual fund that can pass through its foreign taxes to the shareholder (see sec. 853)). Taxable income of this type ordinarily is subject to the single foreign tax credit limitation category known as passive income. However, under certain circumstances, the code treats investment-type income (e.g., dividends and interest) as income in several other separate limitation categories (e.g., high withholding tax interest income, general limitation income) designed to accomplish certain policy objectives or forestall certain abuses. For this reason, any taxpayer with foreign source gross income is required to provide sufficient detail on form 1116 to ensure that foreign source taxable income from investments, as well as all other foreign source taxable income, is allocated to the correct limitation category.

Reasons for Change

The committee believes that a significant number of individuals are entitled to credit relatively small amounts of foreign tax imposed at modest effective tax rates on foreign source investment income. For taxpayers in this class, applicable foreign tax credit limitations typically exceed the amounts of taxes paid. Therefore, relieving these taxpayers from application of the full panoply of foreign tax credit rules may achieve significant reduction in the complexity of the tax law without significantly altering actual tax liabilities. At the same time, however, the committee believes that the benefits of simplified treatment should be limited to those cases where the taxpayer is receiving a payee statement showing the amount of the foreign source income and the foreign tax.

Explanation of Provision

The bill allows individuals with no more than $200 ($400 in the case of married persons filing jointly) of creditable foreign taxes, and no foreign source income other than passive income, to elect a simplified foreign tax credit limitation equal to the lesser of 25 percent of the individual's foreign source gross income or the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year. (It is intended that an individual electing this simplified limitation calculation not be required to file form 1116 in order to obtain the benefit of the credit.) A person who elects the simplified foreign tax credit limitation is not allowed a credit for any foreign tax not shown on a payee statement (as that term is defined in sec. 6724(d)(2)) furnished to him or her. Nor is the person entitled to treat any excess credits for a taxable year to which the election applied as a carryover to another taxable year. Because the limitation for a taxable year to which the election applies can be no more than the creditable foreign taxes actually paid for the taxable year, it is also the case under the bill that no excess credits from another year can be carried over to the taxable year to which the election applies.

For purposes of the simplified limitation, passive income generally is defined to include all types of income that is foreign personal holding company income under the subpart F rules, plus income inclusions from passive foreign corporations (as defined in title IV of the bill), so long as the income is shown on a payee statement furnished to the individual. Thus, for purposes of the simplified limitation, passive income includes all dividends, interest (and income equivalent to interest), royalties, rents, and annuities; net gains from dispositions of property giving rise to such income; net gains from certain commodities transactions; and net gains from foreign currency transactions that give rise to foreign currency gains and losses as defined in section 988. The statutory exceptions to treating these types of income as passive for foreign tax credit limitation purposes, such as the exceptions for high-taxed income and high-withholding-tax interest, are not applicable in determining eligibility to use the simplified limitation.

Although an estate or trust generally computes taxable income and credits in the same manner as in the case of an individual (code sec. 641(b); Treas. Reg. sec. 1.641(b)–1), the simplified limitation does not apply to an estate or trust.

Effective Date

The provision applies to taxable years beginning after December 31, 1995.

5. Treatment of personal transactions by individuals under foreign currency rules (sec. 14113 of the bill and sec. 988 of the code)

Present Law

When a U.S. taxpayer with a U.S. dollar functional currency makes a payment in a foreign currency, gain or loss (referred to as "exchange gain or loss") arises from any change in the value of the foreign currency relative to the U.S. dollar between the time the currency was acquired (or the obligation to pay was incurred) and the time that the payment is made. Gain or loss results because foreign currency, unlike the U.S. dollar, is treated as property for Federal income tax purposes.

Exchange gain or loss can arise in the course of a trade or business or in connection with an investment transaction. Exchange gain or loss can also arise where foreign currency was acquired for personal use. For example, the IRS has ruled that a taxpayer who converts U.S. dollars to a foreign currency for personal use—while traveling abroad—realizes exchange gain or loss on reconversion of appreciated or depreciated foreign currency (Rev. Rul. 74–7, 1974–1 C.B. 198).

Prior to the Tax Reform Act of 1986 ("1986 Act"), most of the rules for determining the Federal income tax consequences of foreign currency transactions were embodied in a series of court cases and revenue rulings issued by the IRS. Additional rules of limited application were provided by Treasury regulations and, in a few instances, statutory bills. Pre-1986 law was believed to be unclear regarding the character, the timing of recognition, and the source of gain or loss due to fluctuations in the exchange rate of foreign currency. The result of prior law was uncertainty of tax treatment for many legitimate transactions, as well as opportunities for tax-motivated transactions. Therefore, in the 1986 act, Congress determined that a comprehensive set of rules should be provided for the

U.S. tax treatment of transactions involving "nonfunctional currencies;" that is, currencies other than the taxpayer's "functional currency."

However, the 1986 Act provisions designed to clarify the treatment of currency transactions, primarily found in section 988, apply to transactions entered into by an individual only to the extent that expenses attributable to such transactions will be deductible under section 162 (as a trade or business expense) or section 212 (as an expense of producing income, other than expenses incurred in connection with the determination, collection, or refund of taxes). Therefore, the principles of pre-1986 law continue to apply to personal currency transactions.[96]

Reasons for Change

An individual who lives or travels abroad generally cannot use U.S. dollars to make all of the purchases incident to ordinary daily life. Instead, the local currency often must be used, yet the individual will not be treated for tax purposes as having changed his or her functional currency to the local currency. If it is necessary to treat foreign currency in this instance as property giving rise to U.S. dollar income or loss every time it was, in effect, "bartered" for goods or services, the U.S. individual living in or visiting a foreign country will have a significant administrative burden that may bear little or no relation to whether U.S.-dollar measured income has increased or decreased. An analogous issue arises for a corporation that has a qualified business unit [QBU] in a foreign country but nevertheless uses the U.S. dollar as its functional currency pursuant to section 986(b)(3). Complexity concerns aside, Congress could have required in that case that gain or loss be computed on each transaction carried out in the local currency. Instead, however, Congress directed the Treasury to adopt a method of translation of the QBU's results that merely approximates the results of determining exchange gain or loss on a transaction-by-transaction basis.[97] The committee believes that individuals also should be given relief from the requirement to keep track of gains on an actual transaction-by-transaction basis in certain cases.

Explanation of Provision

In a case where an individual acquires nonfunctional currency and then disposes of it in a personal transaction, and where exchange rates have changed in the intervening period, the bill provides for nonrecognition of an individual's resulting exchange gain provided that such gain does not exceed $200. The bill does not change the treatment of resulting exchange losses. It is understood that under other code provisions, such losses typically are not deductible by individuals (e.g., sec. 165(c)).

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[96] See, e.g., Rev. Rul. 90–79, 1990–2 C.B. 187 (where the taxpayer purchased a house in a foreign country, financed by a foreign currency loan, and the currency appreciates before the house is sold and the loan is repaid, the taxpayer's exchange loss on repayment of the loan is not deductible under sec. 165 and does not offset taxable gain on the sale of the house).

[97] See Staff of the Joint Committee on Taxation, 100th Cong., 1st Sess., *General Explanation of the Tax Reform Act of 1986*, at 1096 (1987); Treas. Reg. sec. 1.985–3.

Effective Date

The provision applies to taxable years beginning after December 31, 1995.

6. Treatment of certain reimbursed expenses of rural mail carriers (sec. 14114 of the bill and sec. 162 of the code)

Present Law

A taxpayer who uses his or her automobile for business purposes may deduct the business portion of the actual operation and maintenance expenses of the vehicle, plus depreciation (subject to the limitations of sec. 280F). Alternatively, the taxpayer may elect to utilize a standard mileage rate in computing the deduction allowable for business use of an automobile that has not been fully depreciated. Under this election, the taxpayer's deduction equals the applicable rate multiplied by the number of miles driven for business purposes and is taken in lieu of deductions for depreciation and actual operation and maintenance expenses.

An employee of the U.S. Postal Service may compute his deduction for business use of an automobile in performing services involving the collection and delivery of mail on a rural route by using, for all business use mileage, 150 percent of the standard mileage rate.

Rural letter carriers are paid an equipment maintenance allowance [EMA] to compensate them for the use of their personal automobiles in delivering the mail. The tax consequences of the EMA are determined by comparing it with the automobile expense deductions that each carrier is allowed to claim (using either the actual expenses method or the 150 percent of the standard mileage rate). If the EMA exceeds the allowable automobile expense deductions, the excess generally is subject to tax. If the EMA falls short of the allowable automobile expense deductions, a deduction is allowed only to the extent that the sum of this shortfall and all other miscellaneous itemized deductions exceeds 2 percent of the taxpayer's adjusted gross income.

Reasons for Change

The filing of tax returns by rural letter carriers can be complex. Under present law, those who are reimbursed at more than the 150 percent rate must report their reimbursement as income and deduct their expenses as miscellaneous itemized deductions (subject to the two-percent floor). Permitting the income and expenses to wash, so that neither will have to be reported on the rural letter carrier's tax return, will simplify these tax returns.

Explanation of Provision

The bill repeals the special rate for Postal Service employees of 150 percent of the standard mileage rate. In its place, the bill provides that the rate of reimbursement provided by the Postal Service to rural letter carriers is considered to be equivalent to their expenses. The rate of reimbursement that is considered to be equivalent to their expenses is the rate of reimbursement contained in the

1991 collective bargaining agreement, which may in the future be increased by no more than the rate of inflation.

Effective Date

The provision is effective for taxable years beginning after December 31, 1995.

7. Exclusion of combat pay from withholding limited to amount excluded from gross income (sec. 14115 of the bill and sec. 3401 of the code)

Present Law

Exclusion for combat pay

Gross income does not include certain combat pay of members of the Armed Forces (code sec. 112). If enlisted personnel serve in a combat zone during any part of any month, military pay for that month is excluded from gross income. In addition, if enlisted personnel are hospitalized as a result of injuries, wounds, or disease incurred in a combat zone, military pay for that month is also excluded from gross income; this exclusion is limited, however, to hospitalization during any month beginning not more than 2 years after the end of combat in the zone. In the case of commissioned officers, these exclusions from income are limited to $500 per month of military pay.

Income tax withholding

There is no income tax withholding with respect to military pay for a month in which a member of the Armed Forces of the United States is entitled to the benefits of section 112 (sec. 3401(a)(2)). With respect to enlisted personnel, this income tax withholding rule parallels the exclusion from income under section 112: there is total exemption from income tax withholding and total exclusion from income. With respect to officers, however, the withholding rule is not parallel: there is total exemption from income tax withholding, although the exclusion from income is limited to $500 per month.

Reasons for Change

In most instances, the wage withholding rules closely parallel the income inclusion rules. Consequently, most individuals whose income is subject to withholding may essentially rely on withholding to fulfill their tax obligations. The discrepancy between the withholding rules and the exclusion rules with respect to combat pay could cause affected taxpayers (primarily officers) to be faced with substantial additional tax liability at the time of filing their tax returns as a result of underwithholding. Paying the additional tax liability with their tax returns could lead to greater financial hardship than would withholding that is parallel to the exclusion rules.

Explanation of Provision

The bill makes the income tax withholding exemption rules parallel to the rules providing an exclusion from income for combat pay.

Effective Date

The provision is effective for renumeration paid after December 31, 1995.

8. Treatment of traveling expenses of certain Federal employees engaged in criminal investigations (sec. 14116 of the bill and sec. 162 of the code)

Present Law

Unreimbursed ordinary and necessary travel expenses paid or incurred by an individual in connection with temporary employment away from home (e.g., transportation costs and the cost of meals and lodging) are generally deductible, subject to the two-percent floor on miscellaneous itemized deductions. Travel expenses paid or incurred in connection with indefinite employment away from home, however, are not deductible. A taxpayer's employment away from home in a single location is indefinite rather than temporary if it lasts for 1 year or more; thus, no deduction is permitted for travel expenses paid or incurred in connection with such employment (sec. 162(a)). If a taxpayer's employment away from home in a single location lasts for less than 1 year, whether such employment is temporary or indefinite is determined on the basis of the facts and circumstances.

Reasons for Change

The committee believes that it would be inappropriate if this provision in the tax laws were to be a hinderance to the investigation of a Federal crime.

Explanation of Provision

The 1-year limitation with respect to deductibility of expenses while temporarily away from home does not include any period during which a Federal employee is certified by the Attorney General (or the Attorney General's designee) as travelling on behalf of the Federal Government in a temporary duty status to investigate or provide support services for the investigation of a Federal crime. Thus, expenses for these individuals during these periods are fully deductible, regardless of the length of the period for which certification is given (provided that the other requirements for deductibility are satisfied).

Effective Date

The provision is effective for taxable years ending after the date of enactment.

SUBTITLE B. PENSION SIMPLIFICATION

A. Simplified Distribution Rules (secs. 14201–14204 of the bill and secs. 72(d), 101(b), 401(a)(9), and 402(d) of the code)

Present Law

In general

Under present law, a distribution of benefits from a tax-favored retirement arrangement generally is includible in gross income in the year it is paid or distributed under the rules relating to the taxation of annuities. A tax-favored retirement arrangement includes first, a qualified pension plan (sec. 401(a)), second, a qualified annuity plan (sec. 403(a)), and third, a tax-sheltered annuity (sec. 403(b)). Special rules apply in the case of lump-sum distributions from a qualified plan, distributions that are rolled over to an individual retirement arrangement [IRA], and employer-provided death benefits.

Lump-sum distributions

Under present law, lump-sum distributions from qualified plans and annuities are eligible for special 5-year forward income averaging (sec. 402(d)). In general, a lump-sum distribution is a distribution within one taxable year of the balance to the credit of an employee that becomes payable to the recipient first, on account of the death of the employee, second, after the employee attains age 59½, third, on account of the employee's separation from service, or fourth, in the case of self-employed individuals, on account of disability. Lump-sum treatment is not available for distributions from a tax-sheltered annuity.

A taxpayer is permitted to make an election with respect to a lump-sum distribution received on or after the employee attains age 59½ to use 5-year forward income averaging under the tax rates in effect for the taxable year in which the distribution is made. In general, this election allows the taxpayer to pay a separate tax on the lump-sum distribution that approximates the tax that would be due if the lump-sum distribution were received in 5 equal installments. If the election is made, the taxpayer is entitled to deduct the amount of the lump-sum distribution from gross income. Only one such election on or after age 59½ may be made with respect to any employee.

Special transition rules adopted in the Tax Reform Act of 1986 are available with respect to an employee who attained age 50 before January 1, 1986. Under these rules, an individual, trust, or estate may elect to use 5-year forward income averaging (using present-law tax rates) or 10-year forward income averaging (using the tax rates in effect prior to the Tax Reform Act of 1986) with regard to a single lump-sum distribution, without regard to whether the employee has attained age 59½. In addition, an individual, trust, or estate receiving a lump-sum distribution with respect to such employee may elect to retain the capital gains character of the pre-1974 portion of the lump-sum distribution (using a tax rate of 20 percent).

Employer-provided death benefits

Under present law, the beneficiary or estate of a deceased employee generally can exclude up to $5,000 in benefits paid by or on behalf of an employer by reason of the employee's death (sec. 101(b)).

Recovery of basis

Qualified plan distributions other than lump-sum distributions generally are includible in gross income in the year they are paid or distributed under the rules relating to taxation of annuities (sec. 402(a)). Amounts received as an annuity generally are includible in income in the year received, except to the extent they represent the return of the recipient's investment in the contract (i.e., basis) (sec. 72(b)). Under present law, a pro-rata basis recovery rule generally applies, so that the portion of any annuity payment that represents nontaxable return of basis is determined by applying an exclusion ratio equal to the employee's total investment in the contract divided by the total expected payments over the term of the annuity.

Under a simplified alternative method provided by the Internal Revenue Service [IRS] (Notice 88–118) for payments from or under qualified retirement arrangements, the taxable portion of qualifying annuity payments is determined under a simplified exclusion ratio method.

Under both the pro-rata and simplified alternative methods, in no event can the total amount excluded from income as nontaxable return of basis be greater than the recipient's total investment in the contract.

Required distributions

Present law provides uniform minimum distribution rules generally applicable to all types of tax-favored retirement vehicles, including qualified plans and annuities, IRA's, and tax-sheltered annuities.

Under present law, a qualified plan is required to provide that the entire interest of each participant will be distributed beginning no later than the participant's required beginning date (sec. 401(a)(9)). The required beginning date is generally April 1 of the calendar year following the calendar year in which the plan participant or IRA owner attains age 70½. In the case of a governmental plan or a church plan, the required beginning date is the later of first, such April 1, or second, the April 1 of the year following the year in which the participant retires.

Reasons for Change

In almost all cases, the responsibility for determining the tax liability associated with a distribution from a qualified plan, tax-sheltered annuity, or IRA rests with the individual receiving the distribution. Under present law, this task can be burdensome. Among other things, the taxpayer must consider first, whether special tax rules apply that reduce the tax that otherwise would be paid, second, the amount of the taxpayer's basis in the plan, annuity, or IRA and the rate at which such basis is to be recovered, and third, whether or not a portion of the distribution is excludable from income as a death benefit.

The number of special rules for taxing pension distributions makes it difficult for taxpayers to determine which method is best for them and also increases the likelihood of error. In addition, the specifics of each of the rules create complexity. For example, the present-law rules for determining the rate at which a participant's basis in a qualified plan is recovered often entail calculations that the average participant has difficulty performing. These rules require a fairly precise estimate of the period over which benefits are expected to be paid. The IRS publication on taxation of pension distributions (Publication 939) contains over 60 pages of actuarial tables used to determine total expected payments.

The original intent of the income averaging rules for pension distributions was to prevent a bunching of taxable income because a taxpayer received all of the benefits in a qualified plan in a single taxable year. Liberalization of the rollover rules in the Unemployment Compensation Amendments of 1992 increased taxpayers' ability to determine the time of the income inclusion of pension distributions, and eliminates the need for special rules such as 5-year forward income averaging to prevent bunching of income.

It is inappropriate to require all participants to commence distributions by age 70½ without regard to whether the participant is still employed by the employer. However, the accrued benefit of employees who retire after age 70½ generally should be actuarially increased to take into account the period after age 70½ in which the employee was not receiving benefits.

Explanation of Provisions

In general

The bill sunsets 5-year averaging for lump-sum distributions from qualified plans, repeals the $5,000 death benefit exclusion, and simplifies the basis recovery rules applicable to distributions from qualified plans. In addition, the bill modifies the rule that generally requires all participants to commence distributions by age 70½.

Special rules for lump-sum distributions

The bill sunsets the special 5-year forward income averaging rule. Thus, the bill repeals the separate tax paid on a lump-sum distribution and also repeals the deduction from gross income for taxpayers who elect to pay the separate tax on a lump-sum distribution. The bill preserves the transition rules adopted in the Tax Reform Act of 1986.

Employer-provided death benefits

The bill repeals the exclusion from gross income of up to $5,000 in employer-provided death benefits.

Recovery of basis

Under the bill, the portion of an annuity distribution from a qualified retirement plan, qualified annuity, or tax-sheltered annuity that represents nontaxable return of basis generally is determined under a method similar to the present-law simplified alternative method provided by the IRS. Under the simplified method provided in the bill, the portion of each annuity payment that represents nontaxable return of basis generally is equal to the employee's total investment in the contract as of the annuity starting date, divided by the number of anticipated payments determined by reference to the age of the participant in accordance with the table below. The number of anticipated payments listed in the table is based on the employee's age on the annuity starting date. If the number of payments is fixed under the terms of the annuity, that number is used instead of the number of anticipated payments listed in the table.

If the age of the primary annuitant on the annuity starting date is:	The number of anticipated payments is:
Not more than 55	300
More than 55 but not more than 60	260
More than 60 but not more than 65	240
More than 65 but not more than 70	170
More than 70	120

The simplified method is not available if the primary annuitant has attained age 75 on the annuity starting date unless there are fewer than 5 years of guaranteed payments under the annuity. If, in connection with commencement of annuity payments, the recipient receives a lump-sum payment that is not part of the annuity stream, such payment is taxable under the rules relating to annuities (sec. 72) as if received before the annuity starting date, and the investment in the contract used to calculate the simplified exclusion ratio for the annuity payments is reduced by the amount of the payment. As under present law, in no event is the total amount excluded from income as nontaxable return of basis greater than the recipient's total investment in the contract.

Required distributions

The bill modifies the rule that requires all participants in qualified plans to commence distributions by age 70½ without regard to whether the participant is still employed by the employer and generally replaces it with the rule in effect prior to the Tax Reform Act of 1986. Under the bill, distributions generally are required to begin by April 1 of the calendar year following the later of first, the calendar year in which the employee attains age 70½ or second, the calendar year in which the employee retires. However, in the case of a 5-percent owner of the employer, distributions are required to begin no later than the April 1 of the calendar year following the year in which the 5-percent owner attains age 70½.

In addition, in the case of an employee (other than a 5-percent owner) who retires in a calendar year after attaining age 70½, the bill generally requires the employee's accrued benefit to be actuarially increased to take into account the period after age 70½ in which the employee was not receiving benefits under the plan. Thus, under the bill, the employee's accrued benefit is required to reflect the value of benefits that the employee would have received if the employee had retired at age 70½ and had begun receiving benefits at that time.

The actuarial adjustment rule and the rule requiring 5-percent owners to begin distributions after attainment of age 70½ do not apply, under the bill, in the case of a governmental plan or church plan.

Effective Date

The simplified distribution rules generally apply to years beginning after December 31, 1995. The modifications to the basis recovery rules apply with respect to annuity starting dates after December 31, 1995. The sunset of 5-year forward averaging is effective with respect to taxable years beginning after December 31, 1995.

B. Increased Access to Pension Plans

1. Modifications of simplified employee pensions [SEP's] (sec. 14211 of the bill and sec. 408(k)(6) of the code)

Present Law

Under present law, certain employers (other than tax-exempt and governmental employers) can establish a simplified employee pension ("SEP") for the benefit of their employees under which the employees can elect to have contributions made to the SEP or to receive the contributions in cash (sec. 408(k)(6)). The amounts the employee elects to have contributed to the SEP are not currently includible in income. Elective deferrals under a SEP are to be treated in the same manner as elective deferrals under a qualified cash or deferred arrangement and, thus, are subject to the $9,240 (for 1995) limit on elective deferrals.

The election to have amounts contributed to a SEP or received in cash is available only if at least 50 percent of the eligible employees of the employer elect to have amounts contributed to the SEP. In addition, such election is available for a taxable year only if the employer maintaining the SEP had 25 or fewer eligible employees at all times during the prior taxable year.

Under present law, elective deferrals under SEP's are subject to a special nondiscrimination test. The amount eligible to be deferred as a percentage of each highly compensated employee's compensation (i.e., the deferral percentage) is limited by the average deferral percentage (based solely on elective deferrals) for all nonhighly compensated employees who are eligible to participate. The deferral percentage for each highly compensated employee (taking into account only the first $150,000 (for 1995) of compensation) in any year cannot exceed 125 percent of the average deferral percentage for all other eligible employees for that year. Nonelective SEP contributions may not be combined with the elective SEP deferrals for purposes of this test. An employer may not make any other SEP contributions conditioned on elective SEP deferrals. If the 125-percent test is not satisfied, rules similar to the rules applicable to excess contributions to a cash or deferred arrangement (sec. 401(k)) are applied (see C.4., below).

Reasons for Change

Further simplification and broadening of the rules applicable to plans of small employers should encourage more small employers to establish plans for their employees.

Explanation of Provisions

The bill modifies the rules relating to salary reduction SEP's by providing that such SEP's may be established by employers with 100 or fewer employees. The bill also repeals the requirement that at least half of eligible employees actually participate in a salary reduction SEP. The bill also modifies the special nondiscrimination test applicable to elective deferrals under SEP's so that the maximum permitted actual deferral percentage for highly compensated employees for the year is determined by reference to the actual deferral percentage for nonhighly compensated employees for the preceding, rather than the current, year (see C.4., below). The bill permits a salary reduction SEP to satisfy the design-based safe harbor available to qualified cash or deferred arrangements (see C.4., below).

Effective Date

The provisions relating to SEP's apply to years beginning after December 31, 1995.

2. State and local governments and tax-exempt organizations eligible under section 401(k) (sec. 14212 of the bill and sec. 401(k) of the code)

Present Law

Under present law, if a tax-qualified profit-sharing or stock bonus plan meets certain requirements, then an employee is not required to include in income any employer contributions to the plan merely because the employee could have elected to receive the amount contributed in cash (sec. 401(k)). Plans containing this feature are referred to as cash or deferred arrangements. Tax-exempt and State and local governmental organizations are generally prohibited from establishing qualified cash or deferred arrangements. Because of this limitation, many of such employers are precluded from maintaining broad-based, funded, elective deferral arrangements for their employees.

Reasons for Change

Nongovernmental tax-exempt entities and State and local governments should be permitted to maintain qualified cash or deferred arrangements for their employees on the same basis as other employers. The committee believes, however, that such employers should be encouraged to provide benefits through qualified cash or deferred arrangements, rather than through unfunded deferred compensation plans. Benefits provided through qualified cash or deferred arrangements are held in a qualified pension trust, which provides greater benefit security to plan participants. In addition, qualified cash or deferred managements must cover a broad group of employees. Thus, the committee believes it is generally appropriate to restrict the availability of qualified cash or deferred arrangements to those State and local governments and tax-exempt entities that do not maintain unfunded deferred compensation plans for their employees.

Explanation of Provision

The bill allows tax-exempt organizations and State and local governments and their agencies and instrumentalities to maintain cash or deferred arrangements, unless the entity maintains a section 457 plan. Thus, any organization, including an Indian tribe, previously denied eligibility on the ground that they are a tax-exempt organization or a State or local government or agency or instrumentality thereof is eligible to maintain a cash or deferred arrangement for its employees under the bill.

The bill does not alter the ability of certain State and local governments and tax-exempt organizations to continue to maintain qualified cash or deferred arrangements even though the employer also maintains a section 457 plan. Thus, qualified cash or deferred arrangements first, of rural cooperatives, second, adopted by State and local governments before May 6, 1986, and third, adopted by tax-exempt organizations before July 2, 1986, may continued to be maintained even if the employer maintains a section 457 plan.

Effective Date

The provision is effective with respect to years beginning after December 31, 1996.

C. Nondiscrimination Provisions

1. Definition of highly compensated employees (sec. 14221 of the bill and secs. 401(a)(17), 404(l), and 414(q) of the code)

Present Law

For purposes of the rules applying to qualified retirement plans under the code, an employee, including a self-employed individual, generally is treated as highly compensated with respect to a year if, at any time during the year or the preceding year, the employee: First, was a 5-percent owner of the employer; second, received more than $100,000 (for 1995) in annual compensation from the employer; third, received more than $66,000 (for 1995) in annual compensation from the employer and was one of the top-paid 20 percent of employees during the same year; or fourth, was an officer of the employer who received compensation greater than $60,000 (for 1995). If, for any year, no officer has compensation in excess of $60,000 (for 1995), then the highest paid officer of the employer for such year is treated as a highly compensated employee. These dollar amounts are adjusted annually for inflation at the same time and in the same manner as the adjustments to the dollar limit on benefits under a defined benefit pension plan (sec. 415(d)).

Reasons for Change

Under present law, the administrative burden on plan sponsors to determine which employees are highly compensated can be significant. The various categories of highly compensated employees require employers to perform a number of calculations that for many employers have largely duplicative results.

Explanation of Provision

The bill provides that an employee is highly compensated with respect to a year if the employee first, was a 5-percent owner of the employer at any time during the year or the preceding year, or second, had compensation for the preceding year in excess of $80,000. The $80,000 threshold is adjusted for cost-of-living increases in the same manner and at the same time as the limitations on contributions and benefits (sec. 415(d)) (using a base period ending September 30, 1995). The bill also repeals the requirement that if, for a plan year, there are no highly compensated employees, the highest paid officer is treated as a highly compensated employee.

Effective Date

The provision is effective for years beginning after December 31, 1995.

2. Repeal of family aggregation rules (sec. 14222 of the bill and sec. 401(a)(26) of the code)

Present Law

Treatment of family members

A special rule applies with respect to the treatment of family members of certain highly compensated employees for purposes of the nondiscrimination rules applicable to qualified plans. Under the special rule, if an employee is a family member of either a 5-percent owner or 1 of the top-10 highly compensated employees by compensation, then any compensation paid to such family member and any contribution or benefit under the plan on behalf of such family member is aggregated with the compensation paid and contributions or benefits on behalf of the 5-percent owner or the highly compensated employee in the top-10 employees by compensation. Therefore, such family member and employee are treated as a single highly compensated employee. An individual is considered a family member if, with respect to an employee, the individual is a spouse, lineal ascendant or descendant, or spouse of a lineal ascendant or descendant of the employee.

Similar family aggregation rules apply with respect to the $150,000 (for 1995) limit on compensation that may be taken into account under a qualified plan (sec. 401(a)(17)) and for deduction purposes (sec. 404(l)). However, under such provisions, only the spouse of the employee and lineal descendants of the employee who have not attained age 19 are taken into account.

Reasons for Change

The family aggregation rules impose undue restrictions on the ability of a family-owned small business to provide adequate retirement benefits for all members of the family working for the business. In addition, the complexity of the calculations required under the family aggregation rules appears to be unnecessary in light of the numerous other provisions that ensure that qualified pension plans do not disproportionately favor highly compensated employees.

Explanation of Provision

The bill repeals the family aggregation rules.

Effective Date

The provision is effective for years beginning after December 31, 1995.

3. Modification of additional participation requirements (sec. 14223 of the bill and section 401(a)(26) of the code)

Present Law

Under present law, a plan is not a qualified plan unless it benefits no fewer than the lesser of (a) 50 employees of the employer or (b) 40 percent of all employees of the employer (sec. 401(a)(26)). This requirement may not be satisfied by aggregating comparable plans, but may be applied separately to different lines of business of the employer. A line of business of the employer does not qualify as a separate line of business unless it has at least 50 employees.

Reasons for Change

The minimum participation rule was adopted in the Tax Reform Act of 1986 because the Congress believed that it was inappropriate to permit an employer to maintain multiple plans, each of which covered a very small number of employees. Although plans that are aggregated for nondiscrimination purposes are required to satisfy comparability requirements with respect to the amount of contributions or benefits, such an arrangement may still discriminate in favor of highly compensated employees.

However, it is appropriate to better target the minimum participation rule by limiting the scope of the rule to defined benefit pension plans and increasing the minimum number of employees required to be covered under very small plans.

Also, the arbitrary requirement that a line of business must have at least 50 employees requires application of the minimum participation rule on an employer-wide basis in some cases in which the employer truly has separate lines of business.

Explanation of Provision

The bill provides that the minimum participation rule applies only to defined benefit pension plans. In addition, the bill provides that a defined benefit pension plan does not satisfy the rule unless it benefits no fewer than the lesser of first, 50 employees or second, the greater of (a) 40 percent of all employees of the employer or (b) 2 employees (1 employee if there is only 1 employee).

The bill provides that the requirement that a line of business has at least 50 employees does not apply in determining whether a plan satisfies the minimum participation rule on a separate line of business basis.

Effective Date

The provision is effective for years beginning after December 31, 1995.

4. Nondiscrimination rules for qualified cash or deferred arrangements and matching contributions (sec. 14224 of the bill and secs. 401(k) and (m) of the code)

Present Law

A profit-sharing or stock bonus plan, a pre-ERISA money purchase pension plan, or a rural cooperative plan may include a qualified cash or deferred arrangement (sec. 401(k)). Under such an arrangement, an employee may elect to have the employer make payments as contributions to a plan on behalf of the employee, or to the employee directly in cash. Contributions made at the election of the employee are called elective deferrals. The maximum annual amount of elective deferrals that can be made by an individual is $9,240 for 1995. This dollar limit is indexed for inflation. A special nondiscrimination test applies to cash or deferred arrangements.

The special nondiscrimination test applicable to elective deferrals under qualified cash or deferred arrangements is satisfied if the actual deferral percentage [ADP] for eligible highly compensated employees for a plan year is equal to or less than either first, 125 percent of the ADP of all nonhighly compensated employees eligible to defer under the arrangement, or second, the lesser of 200 percent of the ADP of all eligible nonhighly compensated employees or such ADP plus 2 percentage points. The ADP for a group of employees is the average of the ratios (calculated separately for each employee in the group) of the contributions paid to the plan on behalf of the employee to the employee's compensation.

Employer matching contributions and after-tax employee contributions under qualified defined contribution plans are subject to a special nondiscrimination test similar to the special nondiscrimination test applicable to qualified cash or deferred arrangements.

The special nondiscrimination test is satisfied for a plan year if the actual contribution percentage [ACP] for eligible highly compensated employees does not exceed the greater of first, 125 percent of the ACP for all other eligible employees, or second, the lesser of 200 percent of the contribution percentage for all other eligible employees, or such percentage plus 2 percentage points. The ACP for a group of employees for a plan year is the average of the ratios (calculated separately for each employee in the group) of the sum of matching and employee contributions on behalf of each such employee to the employee's compensation for the year.

To determine the amount of excess contributions and the employees to whom they are allocated, the elective deferrals of highly compensated employees are reduced in the order of their actual deferral percentage beginning with those highly compensated employees with the highest actual deferral percentages.

Reasons for Change

The sources of complexity generally associated with the nondiscrimination requirements for qualified cash or deferred arrangements and matching contributions are the recordkeeping necessary to monitor employee elections, the calculations involved in applying the tests, and the correction mechanism, i.e., what to do if the plan fails the tests.

The committee believes that the complexity of nondiscrimination requirements, particularly after the Tax Reform Act of 1986 changes that imposed a dollar cap on elective deferrals ($9,240 in 1995), is not justified by the marginal additional participation of rank-and-file employees that might be achieved by the operation of these requirements. The result that the nondiscrimination rules are intended to produce can also be achieved by creating an incentive for employers to provide certain matching contributions or nonelective contributions on behalf of rank-and-file employees. Such contributions should create a sufficient inducement to rank-and-file employee participation. Thus the committee believes it is appropriate to provide a design-based safe harbor for qualified cash or deferred arrangements. Plans that satisfy the safe harbors would not have to satisfy the nondiscrimination tests for cash or deferred arrangements.

In addition, the significant simplification that a design-based safe harbor test achieves may reduce the complexity of the qualified cash or deferred arrangement requirements enough to encourage additional employers to establish such plans, thereby expanding employee access to voluntary retirement savings arrangements. The adoption of a nondiscrimination safe harbor that eliminates the testing of actual plan contributions removes a significant administrative burden that may act as a deterrent to employers who would not otherwise set up such a plan. Thus, the adoption of a simpler nondiscrimination test may encourage more employers, particularly small employers, who do not now provide any tax-favored retirement plan for their employees, to set up such plans.

A design-based nondiscrimination test provides certainty to an employer and plan participants that does not exist under present law. Under such a test, an employer will know at the beginning of each plan year whether the plan satisfies the nondiscrimination requirements for the year.

Simplifying the nondiscrimination tests will also reduce administrative burdens for those plans that do not utilize the safe harbor. The method of distributing excess contributions under present law can result in a greater reduction in contributions for highly compensated employees at the low end of the group of highly compensated employees than highly compensated employees with greater compensation. The correction mechanism should be modified to prevent this result.

Explanation of Provision

In general

The bill modifies the present-law nondiscrimination test applicable to elective deferrals and employer matching and after-tax employee contributions to provide that the maximum permitted actual deferral percentage for highly compensated employees for the year is determined by reference to the actual deferral percentage for nonhighly compensated employees for the preceding, rather than the current, year. In the case of the first plan year of a qualified cash or deferred arrangement, the actual deferral percentage of nonhighly compensated employees for the previous year is deemed to be 3 percent or, at the election of the employer, the actual deferral percentage for such first plan year.

In addition, the bill adds alternative methods of satisfying the special nondiscrimination requirements applicable to elective deferrals and employer matching contributions. Under these safe harbor rules, a cash or deferred arrangement is treated as satisfying the actual deferral percentage test if the plan of which the arrangement is a part (or any other plan of the employer maintained with respect to the employees eligible to participate in the cash or deferred arrangement) meets first, one of two contribution requirements and second, a notice requirement. A plan satisfies the safe harbor with respect to matching contributions if first, the plan meets the contribution and notice requirements under the safe harbor for cash or deferred arrangements and second, the plan satisfies a special limitation on matching contributions. These safe harbors permit a plan to satisfy the special nondiscrimination tests through plan design, rather than through the testing of actual contributions.

The bill also modifies the method of determining excess contributions under the present-law nondiscrimination test.

Safe harbor for cash or deferred arrangements

A plan satisfies the contribution requirements under the safe harbor rule for qualified cash or deferred arrangements if the plan either first, satisfies a matching contribution requirement or second, the employer makes a nonelective contribution to a defined contribution plan of at least 3 percent of an employee's compensation on behalf of each nonhighly compensated employee who is eligible to participate in the arrangement without regard to whether the employee makes elective contributions under the arrangement.

A plan satisfies the matching contribution requirement if, under the arrangement: First, the employer makes a matching contribution on behalf of each nonhighly compensated employee that is equal to (a) 100 percent of the employee's elective contributions up to 3 percent of compensation and (b) 50 percent of the employee's elective contributions from 3 to 5 percent of compensation; and second, the level of match for highly compensated employees is not greater than the match rate for nonhighly compensated employees at any level of compensation.

Alternatively, if the matching contribution requirement is not satisfied at some level of employee compensation, the requirement is deemed to be satisfied if first, the level of employer matching contributions does not increase as employee elective contributions increase and second, the aggregate amount of matching contributions with respect to elective contributions up to that level of compensation at least equals the amount of matching contributions that would be made if matching contributions satisfied the percentage requirements. For example, the alternative test would be satisfied if an employer matches 125 percent of an employee's elective contributions up to the first 3 percent of compensation, 25 percent of elective deferrals from 3 to 4 percent of compensation, and provides no match thereafter. This is because the employer match does not increase and the aggregate amount of matching contributions is at least equal to the matching contributions required under the general safe harbor rule.

Employer matching and nonelective contributions used to satisfy the contribution requirements of the safe harbor rules are required to be nonforfeitable and subject to the restrictions on withdrawals that apply to an employee's elective deferrals under a qualified cash or deferred arrangement (sec. 401(k)(2)(B) and (C)).

The notice requirement is satisfied if each employee eligible to participate in the arrangement is given written notice, within a reasonable period before any year, of the employee's rights and obligations under the arrangement.

Alternative method of satisfying special nondiscrimination test for matching contributions

The bill provides a safe harbor method of satisfying the special nondiscrimination test applicable to employer matching contributions. Under this safe harbor, a plan is treated as meeting the special nondiscrimination test if first, the plan meets the contribution and notice requirements applicable under the safe harbor method of satisfying the special nondiscrimination requirement for qualified cash or deferred arrangements, and second, the plan satisfies a special limitation on matching contributions. After-tax employee contributions are tested separately under the ACP test.

The limitation on matching contributions is satisfied if first, the matching contributions on behalf of any employee may not be made with respect to employee contributions or elective deferrals in excess of 6 percent of compensation and second, the level of an employer's matching contribution does not increase as an employee's contributions or elective deferrals increase.

Simplified employee pensions [SEP's]

The bill modifies the present-law nondiscrimination test applicable to salary reduction SEP's to provide that the average of the deferral percentages of all nonhighly compensated employees for the preceding, rather than the current, year is to be used. In addition, the bill provides that a salary reduction SEP is permitted to use the safe harbor for qualified cash or deferred arrangements, including the special rule for the first year of a plan.

Distribution of excess contributions

Under the bill, the total amount of excess contributions are determined in the same manner as under present law, but the distribution of excess contributions are required to be made on the basis of the amount of contribution by, or on behalf of, each highly compensated employee. Thus, under the bill, excess contributions are deemed attributable first to those highly compensated employees who have made the greatest dollar amount of elective deferrals under the plan. This modified distribution method also applies to excess contributions that are treated as distributed to an employee and then contributed by the employee to the plan (recharacterization).

For example, assume that an employer maintains a qualified cash or deferred arrangement under section 401(k). Assume further that the actual deferral percentage [ADP] for the eligible nonhighly compensated employees is 2 percent. In addition, assume the following facts with respect to the eligible highly compensated employees:

Employees	Compensation	Deferral	Deferral (percent)
A	$200,000	$7,000	3.5
B	200,000	7,000	3.5
C	70,000	7,000	10.0
D	70,000	5,250	7.5
E	70,000	2,100	3.0
F	70,000	1,750	2.5

Under these facts, the highly compensated employees' ADP is 5 percent, which fails to satisfy the special nondiscrimination requirements.

Under present law, the highly compensated employees with the highest deferral percentages would have their deferrals reduced until the ADP of the highly compensated employees is 4 percent. Accordingly, C and D would have their deferrals reduced to $4,025 (i.e., a deferral percentage of 5.75 percent). The reduction thus is $2,975 for C and $1,225 for D, for a total reduction of $4,200.

Under the bill, the amount of the total reduction is calculated in the same manner as under present law so that the total reduction remains $4,200. However, this total reduction of $4,200 is allocated to highly compensated employees based on the employees with the largest contributions. Thus, A, B, and C would each be reduced by $1,400 from $7,000 to $5,600. The ADP test would not be performed again.

It is intended that the Secretary interpret and apply the section 401(k) and 401(m) nondiscrimination tests in a manner consistent with the modified distribution rule. For example, a plan will not fail to be a qualified cash or deferred arrangement merely because the plan fails to satisfy the section 401(k) nondiscrimination test after excess contributions are distributed or recharacterized under the modified distribution rule.

Effective Date

The provision is effective for plan years beginning after December 31, 1995.

D. Miscellaneous Pension Simplification

1. Treatment of leased employees (sec. 14231 of the bill and sec. 414(n) of the code)

Present Law

An individual (a leased employee) who performs services for another person (the recipient) may be required to be treated as the recipient's employee for various employee benefit provisions if the services are performed pursuant to an agreement between the recipient and any other person (the leasing organization) who is otherwise treated as the individual's employer (sec. 414(n)). The individual is to be treated as the recipient's employee only if the individual has performed services for the recipient on a substantially full-time basis for a year, and the services are of a type historically performed by employees in the recipient's business field.

An individual who otherwise is treated as a recipient's leased employee will not be treated as such an employee if the individual participates in a safe harbor plan maintained by the leasing organization meeting certain requirements. Each leased employee is to be treated as an employee of the recipient, regardless of the existence of a safe-harbor plan, if more than 20 percent of an employer's nonhighly compensated work force are leased.

Reasons for Change

The leased employee rules are complex and have unexpected and sometimes indefensible results, especially as interpreted under regulations proposed by the Secretary. For example, under the "historically performed" standard, the employees and partners of a law firm may be the leased employees of a client of the firm if they work a sufficient number of hours for the client and if it is not unusual for employers in that business field to have in-house counsel. While arguably meeting the present-law leased employee definition, it is believed that situations such as this are outside the intended scope of the rules.

Explanation of Provision

The present-law "historically performed" test is replaced with a new rule defining who must be considered a leased employee. Under the bill, an individual is not considered a leased employee unless the individual's services are performed under significant direction or control by the service recipient. As under present law, the determination of whether someone is a leased employee is made after determining whether the individual is a common-law employee of the service recipient. Thus, an individual who is not a common-law employee of the service recipient could nevertheless be a leased employee of the service recipient. Similarly, the fact that a person is or is not found to perform services under significant direction or control of the recipient for purposes of the employee leasing rules is not determinative of whether the person is or is not a common-law employee of the recipient.

Whether services are performed by an individual under significant direction or control by the service recipient depends on the facts and circumstances. Factors that are relevant in determining whether significant direction or control exists include whether the individual is required to comply with instructions of the service recipient about when, where, and how he or she is to perform the services, whether the services must be performed by a particular person, whether the individual is subject to the supervision of the service recipient, and whether the individual must perform services in the order or sequence set by the service recipient. Factors that generally are not relevant in determining whether such direction or control exists include whether the service recipient has the right to hire or fire the individual and whether the individual works for others.

For example, an individual who works under the direct supervision of the service recipient would be considered to be subject to significant direction or control of the service recipient even if another company hired and trained the individual, had the ultimate (but unexercised) legal right to control the individual, paid his wages, withheld his employment and income taxes, and had the exclusive right to fire him. Thus, for example, temporary secretaries, receptionists, word processing personnel and similar office personnel who are subject to the day-to-day control of the employer in essentially the same manner as a common law employee are treated as leased employees if the period of service threshold is reached.

On the other hand, an individual who is a common-law employee of Company A who performs services for Company B on the business premises of Company B under the supervision of Company A would generally not be considered to be under significant direction or control of Company B. The supervision by Company A must be more than nominal, however, and not merely a mechanism to avoid the literal language of the direction or control test.

An example of the situation in the preceding paragraph might be a work crew that comes into a factory to install, repair, maintain, or modify equipment or machinery at the factory, and that includes a supervisor who is an employee of the equipment (or equipment repair) company and who has the authority to direct and control the crew, and who actually does exercise such direction and control. In this situation, the supervisor and his or her crew are not the leased employees of the manufacturer, even if the supervisor is in frequent communication with the employees of the manufacturer and even if the supervisor and his or her crew are required to comply with the safety and environmental precautions of the manufacturer.

Under the direction or control test, clerical and similar support staff (e.g., secretaries and nurses in a doctor's office) generally would be considered to be subject to significant direction or control of the service recipient and would be leased employees provided the other requirements of section 414(n) are met. On the other hand, outside professionals who maintain their own businesses (e.g., lawyers and accountants) generally would not be considered to be subject to such primary control. However, the Secretary is encouraged to continue efforts to prevent abuses in the leased manager area.

In many cases, the historically performed test is overly broad, and results in the unintended treatment of individuals as leased employees. One of the principal purposes for changing the leased employee rules is to relieve the unnecessary hardship and uncertainty created for employers in these circumstances. However, it is not intended that the direction or control test enable employers to engage in abusive practices. Thus, it is intended that the Secretary interpret and apply the leased employee rules in a manner so as to prevent abuses. This ability to prevent abuses under the leasing rules is in addition to the present-law authority of the Secretary under section 414(o). For example, one potentially abusive situation exists where the benefit arrangements of the service recipient overwhelmingly favor its highly compensated employees, the employer has no or very few nonhighly compensated common-law employees, yet the employer makes substantial use of the services of nonhighly compensated individuals who are not its common-law employees.

Effective Date

The provision is effective for years beginning after December 31, 1995, except that the changes do not apply to relationships that have been previously determined by an IRS ruling not to involve leased employees. In applying the leased employee rules to years beginning before the effective date, the Secretary is directed to use a reasonable interpretation of the statute to apply the leasing rules to prevent abuse.

2. Plans covering self-employed individuals (sec. 14232 of the bill and sec. 401(d) of the code)

Present Law

Prior to the Tax Equity and Fiscal Responsibility Act of 1982 [TEFRA], different rules applied to retirement plans maintained by incorporated employers and unincorporated employers (such as partnerships and sole proprietors). In general, plans maintained by unincorporated employers were subject to special rules in addition to the other qualification requirements of the code. Most, but not all, of this disparity was eliminated by TEFRA. Under present law, certain special aggregation rules apply to plans maintained by owner employees of unincorporated businesses that do not apply to other qualified plans (sec. 401(d) (1) and (2)).

Reasons for Change

The remaining special aggregation rules for plans maintained by unincorporated employers are unnecessary and should be eliminated. Applying the same set of rules to all types of plans would make the qualification standards easier to apply and administer.

Explanation of Provision

The bill eliminates the special aggregation rules that apply to plans maintained by self-employed individuals that do not apply to other qualified plans.

Effective Date

The provision is effective for years beginning after December 31, 1995.

3. Elimination of special vesting rule for multiemployer plans (sec. 14233 of the bill and sec. 411(a) of the code)

Present Law

Under present law, except in the case of multiemployer plans, a plan is not a qualified plan unless a participant's employer-provided benefit vests at least as rapidly as under one of two alternative minimum vesting schedules. A plan satisfies the first schedule if a participant acquires a nonforfeitable right to 100 percent of the participant's accrued benefit derived from employer contributions upon the participant's completion of 5 years of service. A plan satisfies the second schedule if a participant has a nonforfeitable right to at least 20 percent of the participant's accrued benefit derived from employer contributions after 3 years of service, 40 percent at the end of 4 years of service, 60 percent at the end of 5 years of service, 80 percent at the end of 6 years of service, and 100 percent at the end of 7 years of service.

In the case of a multiemployer plan, a participant's accrued benefit derived from employer contributions is required to be 100 percent vested no later than upon the participant's completion of 10 years of service. This special rule applies only to employees covered by the plan pursuant to a collective bargaining agreement.

Reasons for Change

The present-law vesting rules for multiemployer plans add to complexity because there are different vesting schedules for different types of plans, and different vesting schedules for persons within the same multiemployer plan. In addition, the present-law rule prevents some workers from earning a pension under a multiemployer plan. Conforming the multiemployer plan rules to the rules for other plans would mean that workers could earn additional benefits.

Explanation of Provision

The bill conforms the vesting rules for multiemployer plans to the rules applicable to other qualified plans.

Effective Date

The provision is effective for plan years beginning on or after the earlier of first, the later of January 1, 1996, or the date on which the last of the collective bargaining agreements pursuant to which the plan is maintained terminates, or second, January 1, 1998, with respect to participants with an hour of service after the effective date.

4. Distributions under rural cooperative plans (sec. 14232 of the bill and sec. 401(k)(7) of the code)

Present Law

Under present law, a qualified cash or deferred arrangement can permit withdrawals by participants only after the earlier of first, the participant's separation from service, death, or disability, second, termination of the arrangement, third, in the case of a profit-sharing or stock bonus plan, the attainment of age 59½, or fourth, in the case of a profit-sharing or stock bonus plan, upon hardship of the participant (sec. 401(k)(2)(B)). In the case of a rural cooperative qualified cash or deferred arrangement, which is part of a money purchase pension plan, withdrawals by participants cannot occur upon attainment of age 59½ or upon hardship.

Reasons for Change

It is appropriate to permit qualified cash or deferred arrangements of rural cooperatives to permit distributions to plan participants under the same circumstances as other qualified cash or deferred arrangements.

Explanation of Provision

The bill provides that a rural cooperative plan that includes a qualified cash or deferred arrangement will not be treated as violating the qualification requirements merely because the plan permits distributions to plan participants after the attainment of age 59½.

Effective Date

The provision is effective for distributions after December 31, 1995.

5. Treatment of governmental plans under section 415 (sec. 14235 of the bill and secs. 415 and 457 of the code)

Present Law

Present law imposes limits on contributions and benefits under qualified plans based on the type of plan (sec. 415). The limits apply to plans maintained by private and public employers. Certain special rules apply to governmental plans.

In the case of a defined contribution plan, the annual additions to the plan with respect to each plan participant are limited to the lesser of first, 25 percent of compensation, or second, $30,000 (for 1995). The limit on the annual benefits payable by a defined benefit pension plan is generally the lesser of first, 100 percent of average compensation for the 3 years in which it was highest, or second, $120,000 (for 1995). The dollar limit are increased for inflation. The dollar limit is reduced actuarially if payment of benefits is to begin before the Social Security retirement age, and increased if benefits are to begin after that age.

For purpose of these limits, present law provides that compensation generally does not include employer contributions to certain employee plans under a salary reduction agreement.

Under special rules for plans maintained by State or local governments, such plans may provide benefits greater than those permitted by the limits on benefits applicable to plans maintained by private employers.

Reasons for Change

The limits on contributions and benefits create unique problems for plans maintained by public employers.

Explanation of Provision

The bill makes the following modifications to the limits on contributions and benefits as applied to governmental plans: First, compensation includes employer contributions to certain employee plans under a salary reduction arrangement; second, the 100 percent of compensation limitation does not apply; and third, the defined benefit pension plan limitation does not apply to certain disability and survivor benefits. The bill also permits State and local government employers to maintain excess benefit plans (i.e., plans that provide benefits that cannot be provided under a qualified plan due to the limits on contributions and benefits) without regard to the limits on unfunded deferred compensation arrangements of State and local government employers (sec. 457). Benefits provided by such plans are subject to the same tax rules applicable to excess plans maintained by private employers (e.g., sec. 83).

Effective Date

The provision is effective for years beginning on or after January 1, 1996. Governmental plans are treated as if in compliance with the requirements of section 415 for years beginning before January 1, 1996.

6. Uniform retirement age (sec. 14236 of the bill and sec. 401(a)(5) of the code)

Present Law

A qualified plan generally must provide that payment of benefits under the plan must begin no later than 60 days after the end of the plan year in which the participant reaches age 65. Also, for purpose of the vesting and benefit accrual rules, normal retirement age generally can be no later than age 65. For purposes of applying the limits on contributions and benefits (sec. 415), Social Security retirement age is generally used as retirement age. The Social Security retirement age as used for such purposes is presently age 65, but is scheduled to gradually increase.

Reasons for Change

Many plans base benefits on Social Security retirement age so that the benefits under the plan complement Social Security. Under present law, plans that do so may fail applicable nondiscrimination tests. It is believed that the Social Security retirement age is an appropriate age for use under plans maintained by private employers.

Explanation of Provision

The bill provides that for purposes of the general nondiscrimination rule (sec. 401(a)(4)) the Social Security retirement age (as defined in sec. 415) is a uniform retirement age and that subsidized early retirement benefits and joint and survivor annuities are not treated as not being available to employees on the same terms merely because they are based on an employee's Social Security retirement age (as defined in sec. 415).

Effective Date

The provision is effective for years beginning after December 31, 1995.

7. Uniform penalty provisions to apply to certain pension reporting requirements (sec. 14237 of the bill and secs. 6652(i) and 6724(d) of the code)

Present Law

Any person who fails to file an information report with the IRS on or before the prescribed filing date is subject to penalties for each failure. The general penalty structure provides that the amount of the penalty is to vary with the length of time within which the taxpayer corrects the failure, and allows taxpayers to correct a de minimis number of errors and avoid penalties entirely (sec. 6721). A different, flat-amount penalty applies for each failure to provide information reports to the IRS or statements to payees relating to pension payments (sec. 6652(e)).

Reasons for Change

Conforming the information-reporting penalties that apply with respect to pension payments to the general information-reporting penalty structure would simplify the overall penalty structure through uniformity and provide more appropriate information-reporting penalties with respect to pension payments.

Explanation of Provision

The bill incorporates into the general penalty structure the penalties for failure to provide information reports relating to pension payments to the IRS and to recipients. Thus, information reports with respect to pension payments are treated in a similar fashion to other information reports. The bill also modifies the penalty for failure to provide the notice required with respect to distributions that are eligible for rollover treatment (sec. 402(b)).

Effective Date

The provision applies to returns and statements the due date (determined without regard to extensions) for which is after December 31, 1995.

8. Contributions on behalf of disabled employees (sec. 14238 of the bill and sec. 415(c)(3) of the code)

Present Law

Under present law, an employer may elect to continue deductible contributions to a defined contribution plan on behalf of an employee who is permanently and totally disabled. For purposes of the limit on annual additions (sec. 415(c)), the compensation of a disabled employee is deemed to be equal to the annualized compensation of the employee prior to the employee's becoming disabled. Contributions are not permitted on behalf of disabled employees who were officers, owners, or highly compensated before they became disabled.

Reasons for Change

It is appropriate to facilitate the provision of benefits for disabled employees, if it is done on a nondiscriminatory basis.

Explanation of Provision

The bill provides that the special rule for contributions on behalf of disabled employees is applicable without an employer election and to highly compensated employees if the defined contribution plan provides for the continuation of contributions on behalf of all participants who are permanently and totally disabled.

Effective Date

The provision applies to years beginning after December 31, 1995.

9. Treatment of deferred compensation plans of State and local governments and tax-exempt organizations (sec. 14239 of the bill and sec. 457(e) of the code)

Present Law

Under a general principle of the Federal income tax system, individuals are taxed currently not only on compensation actually received, but also on compensation constructively received during the taxable year. An individual is treated as having constructively received compensation during the current taxable year if the compensation would have been payable during the current taxable year but for the individual's election to defer receipt of the compensation to a later taxable year.

An exception to this rule applies to compensation deferred under an eligible unfunded deferred compensation plan (a sec. 457 plan) of a tax-exempt or State or local governmental employer.

Under a section 457 plan, an employee who elects to defer the receipt of current compensation will be taxed on the amounts deferred when such amounts are paid or made available. The maximum annual deferral under such a plan is the lesser of first, $7,500 or second, 33⅓ percent of compensation (net of the deferral).

In general, amounts deferred under a section 457 plan may not be made available to an employee before the earlier of first, the calendar year in which the participant attains age 70½, second, when the participant is separated from service with the employer, or third, when the participant is faced with an unforeseeable emergency. Amounts that are made available to an employee upon separation from service are includible in gross income in the taxable year in which they are made available.

Under present law, benefits under a section 457 plan are not treated as made available if the participant may elect to receive a lump sum payable after separation from service and within 60 days of the election. This exception to the general rules is available only if the total amount payable to the participant under the plan does not exceed $3,500 and no additional amounts may be deferred under the plan with respect to the participant.

Reasons for Change

It is appropriate to index the dollar limits on deferrals under section 457 plans to maintain the value of the deferral and to provide two additional exceptions to the principle of constructive receipt with respect to distributions from such plans.

Explanation of Provision

The bill makes three changes to the rules governing unfunded deferred compensation plans of tax-exempt and governmental employers.

First, the bill permits in-service distributions of accounts that do not exceed $3,500 if no amount has been deferred under the plan with respect to the account for 2 years and there has been no prior distribution under this cash-out rule.

Second, the bill increases the number of elections that can be made with respect to the time distributions must begin under the plan. The bill provides that the amount payable to a participant under a section 457 plan is not to be treated as made available merely because the participant may elect to defer commencement of distributions under the plan if first, the election is made after amounts may be distributed under the plan but before the actual commencement of benefits, and second, the participant makes only 1 such additional election. This additional election is permitted without the need for financial hardship, and the election can only be to a date that is after the date originally selected by the participant.

Third, the bill provides for indexing of the dollar limit on deferrals. No rounding rules apply to such indexing.

Effective Date

The provision is effective for taxable years beginning after December 31, 1995.

10. Trust requirement for deferred compensation plans of State and local governments (sec. 14240 of the bill and sec. 457 of the code)

Present Law

Compensation deferred under an eligible unfunded deferred compensation plan (a "sec. 457 plan") of a tax-exempt or State and local governmental employer is not includible in gross income until paid or made available. One of the requirements for a section 457 plan is that the maximum annual amount that can be deferred is the lesser of $7,500 or 33⅓ percent of the individual's taxable compensation. This maximum limit is coordinated with the annual limit on elective deferrals under qualified cash or deferred arrangements (sec. 401(k) plans) and similar arrangements.

Amounts deferred under a section 457 plan generally may not be made available to an employee before the earlier of first, the calendar year in which the employee attains age 70½, second, when the employee is separated from service with the employer, or third, when the employee is faced with an unforeseeable emergency. Amounts that are made available to an employee upon separation from service are includible in gross income in the taxable year in which they are made available.

Another requirement of a section 457 plan is that (until the compensation is made available to the participant) all amounts of compensation deferred under the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights must remain solely the property and rights of the employer, subject only to the claims of the employer's general creditors. Consequently, compensation deferred by employees under a section 457 plan are not protected from the employer's general creditors in case of the employer's bankruptcy. By contrast, the assets of a qualified cash or deferred arrangement must be held in trust for the exclusive benefit of employees and cannot be used by the employer or the employer's creditors.

Amounts deferred under plans of tax-exempt and governmental employers that do not meet the requirements of section 457 are includible in gross income in the first year in which there is no substantial risk of forfeiture of such amounts.

Reasons for Change

The committee is concerned about the potential for employees of certain State and local governments to lose significant portions of their retirement savings because their employer has chosen to provide benefits through an unfunded deferred compensation plan rather than a qualified pension plan. The committee believes, in general, that it is appropriate to encourage such employers to provide benefits under qualified pension plans, including qualified cash or deferred arrangements. However, the committee also recognizes that employers may not want to incur the administrative costs of terminating their unfunded deferred compensation plans (sec. 457 plans) and establishing qualified plans. Therefore, the committee finds it appropriate to require that benefits under a section 457 plan of a State and local government should be held in a trust (or custodial account or annuity contract) to insulate the retirement benefits of employees from the claims of the employer's creditors. The committee continues to believe that qualified plans provide the best benefit protections to employees and employers should be encouraged to provide retirement benefits through such plans rather than section 457 plans.

Explanation of Provision

Under the bill, all amounts deferred (including amounts deferred prior to the effective date of the bill) under a section 457 plan maintained by a State and local governmental employer are to be held in trust (or custodial account or annuity contract) for the exclusive benefit of employees. Consequently, the requirement that amounts deferred under a section 457 plan be subject only to the claims of the employer's creditors is repealed with respect to State and local governmental section 457 plans. The trust (or custodial account or annuity contract) is provided tax-exempt status and, as under present law, amounts are not includible in income until made available to the employee. Amounts are not considered made available merely because they are held in a trust, custodial account, or annuity contract.

All other present-law requirements applicable to section 457 plans, including the annual limit on the maximum amount of deferral and the restrictions on when amounts deferred can be made available, still apply. Further, to the extent these requirements, including the trust requirement, are not satisfied, amounts deferred are includible in the employee's income when there is no substantial risk of forfeiture.

The bill does not modify the present-law rules applicable to section 457 plans of nongovernmental tax-exempt employers or the rules applicable to nonqualified plans of other employers.

Effective Date

The provision is effective on the later of first, January 1, 1996, or second, 90 days after the date of enactment. Amounts deferred under a section 457 plan maintained by a State or local government prior to such date are required to be held in trust (or custodial account or annuity contract) by such date.

11. Correction of GATT interest and mortality rate provisions in the Retirement Protection Act (sec. 14241 of the bill and sec. 767(d)(3)(A) of the Uruguay Round Agreements Act [GATT])

Present Law

Present law imposes limits on contributions and benefits under qualified plans based on the type of plan, i.e., based on whether the plan is a defined contribution plan or a defined benefit pension plan (sec. 415). An overall limit applies if an individual is a participant in both a defined benefit pension plan and a defined contribution plan.

In the case of a defined contribution plan, annual additions to the plan with respect to each participant for a limitation year generally cannot exceed the lesser of first, 25 percent of compensation or second, $30,000 (for 1995).

The limit on the annual benefits payable by a defined benefit pension plan is generally the lesser of first, 100 percent of average compensation for the 3 years in which it was the highest or second, $120,000 (for 1995). If a benefit is payable under the plan in a form other than a straight life annuity, then the benefit must be actuarially adjusted to an equivalent annual straight life annuity before applying the limit on benefits. In addition, if a benefit is payable beginning at an age other than the participant's Social Security retirement age, the $120,000 dollar limitation is actuarially adjusted so that it equals an annual benefit that is equivalent to the dollar limitation at the participant's Social Security retirement age. The limit is reduced if benefits begin before Social Security retirement age, and increased if benefits begin after Social Security retirement age.

The Retirement Protection Act of 1994, enacted as part of the implementing legislation for the General Agreement on Tariffs and Trade [GATT], modified the actuarial assumptions that must be used in adjusting benefits and limitations. In general, in adjusting a benefit that is payable in a form other than a straight life annuity and in adjusting the dollar limitation if benefits begin before Social Security retirement age, the interest rate to be used cannot be less than 5 percent or the rate specified in the plan. Under the Retirement Protection Act, if the benefit is payable in a form subject to the requirements of section 417(e)(3),[98] then the interest rate on 30-year Treasury securities is substituted for 5 percent.[99] Also under the Retirement Protection Act, for purposes of adjusting any limit or benefit, the mortality table prescribed by the Secretary must be used.

This provision of the Retirement Protection Act is generally effective as of the first day of the first limitation year beginning in 1995.[100]

The maximum benefit payable under present law may be less than the maximum benefit payable under prior law because the 30-year Treasury rate required to be used to adjust benefits and limits under the Retirement Protection Act is higher than the 5-percent interest rate used under prior law. A plan is permitted, but not required, to reduce benefits as of the last day of the last limitation year beginning before January 1, 1995, below the level that would have been paid under prior law. A plan will not be treated as violating the code rule prohibiting cutbacks in accrued benefits (sec. 411(d)(6)) merely because it reduces benefits to comply with this provision of the Retirement Protection Act. Thus, a participant's accrued benefit may be reduced if the reduction results solely from the application of this provision.

The Retirement Protection Act made similar changes to the interest rate and mortality assumptions used to calculate the value of lump-sum distributions for purposes of the rule permitting involuntary distributions of certain accrued benefits (sec. 417(e)). In the case of a plan adopted and in effect before December 8, 1995, those provisions do not apply before the earlier of first, the date a plan amendment applying the new assumptions is adopted or made effective (whichever is later), or second, the first day of the first plan year beginning after December 31, 1999.

Reasons for Change

The committee is aware that the GATT provisions enacted in the 103d Congress had the result of reducing the benefit payments to certain pension plan beneficiaries. The committee believes that it is appropriate to ameliorate this result by providing the same transition period for the modifications to limits on contributions and benefits to that provided under similar GATT provisions.

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[98] Benefits subject to these rules include all forms of benefit except nondecreasing annuity benefits payable for the life of the participant or, in the case of a preretirement survivor annuity, the life of the surviving spouse. For this purpose, a nondecreasing annuity includes a qualified joint and survivor annuity, a qualified preretirement survivor annuity, and an annuity that decreases merely because of the cessation or reduction of Social Security supplements or qualified disability payments. See Rev. Rul. 95–29, 1995–15 I.R.B. 10 (April 10, 1995).

[99] In adjusting the $120,000 limit in the case of benefits that begin after Social Security retirement age, the interest rate used may not be greater than the lesser of 5 percent or the rate specified in the plan.

[100] An employer may elect to treat the changes as being effective on or after December 8, 1994 (the date of enactment of the Retirement Protection Act).

Explanation of Provision

The bill conforms the effective date of the new interest rate and mortality assumptions that must be used under section 415 to calculate the limits on benefits and contributions to the effective date of the provision relating to the calculation of lump-sum distributions under section 417(e). Under the bill, a plan is not required to use the new assumptions in determining the maximum payable benefit under section 415 with respect to benefits accrued before the earlier of first, the date a plan amendment applying the new assumptions is adopted or made effective (whichever is later), or second, the first day of the first limitation year beginning after December 31, 1999. This rule applies only in the case of plans that were adopted and in effect before the date of enactment of the Retirement Protection Act (December 8, 1994).

Until the new assumptions apply, the limit on benefits under section 415 is calculated under the law in effect immediately prior to the enactment of the Retirement Protection Act, and consistent with plan provisions in effect immediately prior to the enactment of the Retirement Protection Act (provided they are consistent with the law in effect immediately prior to the enactment of the Retirement Protection Act).

To the extent plans have already been amended to reflect the new assumptions, plan sponsors are permitted within 1 year of the date of enactment to amend the plan to retroactively reverse such amendment. This rule applies only in the case of a plan amendment that was adopted or made effective on or before the date of enactment

Effective Date

The provision is effective as if included in the Retirement Protection Act.

12. Multiple salary reduction agreements permitted under section 403(b) (sec. 14242 of the bill and sec. 403(b) of the code)

Present Law

Under Treasury regulations, a participant in a tax-sheltered annuity plan (sec. 403(b)) is not permitted to enter into more than one salary reduction agreement in any taxable year. These regulations further provide that a salary reduction agreement is effective only with respect to amounts "earned" after the agreement becomes effective, and that a salary reduction agreement must be irrevocable with respect to amounts earned while the agreement is in effect.

These restrictions do not apply to other elective deferral arrangements such as a qualified cash or deferred arrangement (sec. 401(k)). Under Treasury regulations, participants in a qualified cash or deferred arrangement may enter into more than one salary reduction agreement in a taxable year, such an agreement is effective with respect to compensation currently available to the participant after the agreement becomes effective even though previously "earned," and the agreement may be revoked by the participant.

Reasons for Change

It is appropriate to conform the treatment of salary reduction agreements under section 403(b) to the treatment of qualified cash or deferred arrangements.

Explanation of Provision

The bill provides that for participants in a tax-sheltered annuity plan, the frequency that a salary reduction agreement may be entered into, the compensation to which such agreement applies, and the ability to revoke such agreement shall be determined under the rules applicable to qualified cash or deferred arrangements.

Effective Date

The provision is effective for taxable years beginning after December 31, 1995.

13. Waiver of minimum waiting period for qualified plan distributions (sec. 14243 of the bill and sec. 417(a) of the code)

Present Law

Present law contains a number of rules designed to provide income to the surviving spouse of a deceased employee. Under these spousal protection rules, defined benefit pension plans and money purchase pension plans are required to provide that vested retirement benefits with a present value in excess of $3,500 are payable in the form of a qualified joint and survivor annuity [QJSA] or, in the case of a participant who dies before the annuity starting date, a qualified preretirement survivor annuity [QPSA].

Benefits from a plan subject to the survivor benefit rules may be paid in a form other than a QJSA or QPSA if the participant waives the QJSA or QPSA (or both) and the applicable notice, election, and spousal consent requirements are satisfied.

Present law contains detailed rules regarding the waiver of the QJSA or QPSA forms of benefit and the spousal consent requirements. Generally an election to waive the QJSA or QPSA forms of benefit must be in writing, and, if the participant is married on the annuity starting date, must be accompanied by a written spousal consent acknowledging the effect of such consent and witnessed by a plan representative or notary public. Both the participant's waiver and the spousal consent must state the specific nonspouse beneficiary who will receive the benefit, and, in the case of a QJSA waiver, must specify the particular optional form of benefit that will be paid. The waiver will not be valid unless the participant has previously received a written explanation of first, the terms and conditions of the QJSA or QPSA forms of benefit, second, the participant's right to make, and the effect of, an election to waive these forms of benefits, third, the rights of the participant's spouse, and fourth, the right to make, and the effect of, a revocation of an election to waive these forms of benefits.

Final Treasury regulations provide that in the case of a QJSA, this written explanation must generally be provided to participants no less than 30 days and no more than 90 days before the annuity starting date.[101] Under these regulations, even if a participant has elected to waive the QJSA and the spouse has consented to the distribution, the distribution from the plan cannot be made until 30 days after the written explanation was provided to the participant.[102]

Reasons for Change

The committee believes that the notice period applicable to a QJSA should not prevent the payment of benefits if such period is waived by the plan participant and, if applicable, the participant's spouse.

Explanation of Provision

The bill provides that the minimum period prescribed by the Secretary of the Treasury in regulations between the date the explanation of the QJSA is provided and the annuity starting date shall not apply if waived by the participant and, if applicable, the participant's spouse. For example, if the participant has not elected to waive the QJSA, only the participant need waive the minimum waiting period.

Effective Date

The provision is effective with respect to plan years beginning after December 31, 1995.

14. Repeal of combined plan limit (sec. 415(e)) (sec. 14244 of the bill and sec. 415(e) of the code)

Present Law

In general

Present law provides limits on contributions and benefits under qualified plans based on the type of plan, i.e., based on whether the plan is a defined contribution plan or a defined benefit pension plan (sec. 415). An overall limit applies if an individual is a participant in both a defined benefit pension plan and a defined contribution plan.

Defined contribution plan limit

Under a defined contribution plan, annual additions to the plan with respect to each participant for a limitation year cannot exceed the lesser of first, 25 percent of compensation or second, $30,000 (for 1995). Annual additions generally are the sum of employer contributions, employee contributions, and forfeitures with respect to an individual under all defined contribution plans of the same em-

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[101] T.D. 8219 (August 19, 1988).

[102] On September 15, 1995 (after public release of the provision), Treasury issued temporary regulations (T.D. 8620) which provide that a plan may permit a participant to elect (with any applicable spousal consent) a distribution with an annuity starting date before 30 days have elapsed since the explanation was provided, as long as the distribution commences more than 7 days after the explanation was provided. Consequently, even if the participant (and spouse, if applicable) has elected to waive the minimum waiting period for receiving a qualified plan distribution, the distribution from the plan cannot be made until 7 days have elapsed since the explanation was provided to the participant.

ployer. The $30,000 limit is indexed for inflation in $5,000 increments.

Defined benefit plan limit

The limit on the annual benefit payable to (or with respect to) a participant by all defined benefit pension plans of the same employer is generally the lesser of first, 100 percent of average compensation for the 3 years in which it was the highest, or second, $120,000 (for 1995). The $120,000 limit is indexed for inflation in $5,000 increments. If a benefit is payable under the plan in a form other than a straight life annuity, then the benefit must be actuarially adjusted to an equivalent annual straight life annuity before applying the limit on benefits. In addition, if a benefit is payable beginning at an age other than the participant's Social Security retirement age, the $120,000 dollar limitation is actuarially adjusted so that it equals an annual benefit that is equivalent to the dollar limitation at the participant's Social Security retirement age. The limit is reduced if benefits begin before Social Security retirement age, and increased if benefits begin after Social Security retirement age.

Combined plan limit

An additional limit applies if an employee participates in both a defined benefit pension plan and a defined contribution plan maintained by the same employer (sec. 415(e)). The combined plan limitation is designed to prevent avoidance of the separate plan limits through the creation of different types of plans.

The combined limit is satisfied if the sum of the "defined benefit plan fraction" and the "defined contribution plan fraction" is not greater than 1.0. Although the sum of these fractions may not exceed 1.0, the plan fractions effectively provide an aggregate limit of the lesser of 1.25 (as applied with respect to the dollar limits) or 1.4 (as applied with respect to the percentage limits).

The defined benefit plan fraction is designed to measure the portion of the maximum permitted defined benefit plan limit that the employee actually uses. The numerator is the participant's projected normal retirement benefit determined at the close of the year. The denominator is generally the lesser of 125 percent of the dollar limitation for the year, or 140 percent of the employee's average compensation for the 3 years of employment in which the employee's average compensation was highest.

The defined contribution plan fraction measures the portion that the employee actually uses of the maximum permitted contributions to a defined contribution plan for the employee's total years of service with the employer. The numerator is generally the total of the contributions and forfeitures allocated to the employee's account for each of the employee's years of service with the employer through the close of the year for which the fraction is being determined. The denominator is the sum of the lesser of the following amounts, computed separately for such year and each prior year of service with the employer: First, 125 percent of the dollar amount in effect for such year, or second, 140 percent of the 25 percent of compensation limit for the participant.

Reasons for Change

One of the most significant sources of complexity relating to qualified pension plans is the calculation of the combined plan limit under section 415(e). Many new employers do not establish defined benefit pension plans, which provide employees with the greatest retirement income security. One of the reasons that defined benefit pension plans are not being established is because of the complex rules governing these plan and the significant administrative costs entailed in maintaining them. Section 415(e) is just one of the deterrents to the establishment and maintenance of qualified defined benefit pension plans. Thus, the committee does not believe that the administrative costs associated with section 415(e) and the complexity of the calculations required are justified. Further, the committee believes that section 415(e) may have the effect of discouraging employers from providing adequate retirement benefits to their employees.

Explanation of Provision

The bill repeals the combined limit for participants in both a defined contribution plan and a defined benefit pension plan maintained by the same employer.

Effective Date

The repeal of the combined plan limit applies to limitation years beginning after December 31, 1996.

15. Date for adoption of plan amendments (sec. 14245 of the bill)

Present Law

Under regulations, plan amendments to reflect amendments to the code generally must be made within the remedial amendment period. Such period generally ends at the time prescribed by law for filing the income tax return of the employer for the employer's taxable year in which the change in law occurs. The plan must be operated in accordance with the law at all times, and any plan amendment must apply retroactively to the period following the effective date of the change which it reflects.

Reasons for Change

Plan sponsors should have adequate time to amend plan documents.

Explanation of Provision

The bill provides that any plan amendments required by the bill are not required to be made before the first plan year beginning on or after January 1, 1997, if first, the plan is operated in accordance with the applicable provision, second, the plan is amended to comply with the required changes no later than the first day of the first plan year beginning after December 31, 1996, and third, the amendment is retroactive to the effective date of the applicable provision.

Effective Date

The provision is effective on the date of enactment.

SUBTITLE C. TREATMENT OF PARTNERSHIPS

A. General Provisions

1. Simplified flow-through for large partnerships (sec. 14301 of the bill and new secs. 771–777 of the code)

Present Law

Treatment of partnerships in general

A partnership generally is treated as a conduit for Federal income tax purposes. Each partner takes into account separately his distributive share of the partnership's items of income, gain, loss, deduction or credit. The character of an item is the same as if it had been directly realized or incurred by the partner. Limitations affecting the computation of taxable income generally apply at the partner level.

The taxable income of a partnership is computed in the same manner as that of an individual, except that no deduction is permitted for personal exemptions, foreign taxes, charitable contributions, net operating losses, certain itemized deductions, or depletion. Elections affecting the computation of taxable income derived from a partnership are made by the partnership, except for certain elections such as those relating to discharge of indebtedness income and the foreign tax credit.

Capital gains

The net capital gain of an individual is taxed generally at the same rates applicable to ordinary income, subject to a maximum marginal rate of 28 percent. Net capital gain is the excess of net long-term capital gain over net short-term capital loss. Individuals with a net capital loss generally may deduct up to $3,000 of the loss each year against ordinary income. Net capital losses in excess of the $3,000 limit may be carried forward indefinitely.

A special rule applies to gains and losses on the sale, exchange or involuntary conversion of certain trade or business assets (sec. 1231). In general, net gains from such assets are treated as long-term capital gains but net losses are treated as ordinary losses.

A partner's share of a partnership's net short-term capital gain or loss and net long-term capital gain or loss from portfolio investments is separately reported to the partner. A partner's share of a partnership's net gain or loss under section 1231 generally is also separately reported.

Deductions

Miscellaneous itemized deductions (e.g., certain investment expenses) are deductible only to the extent that, in the aggregate, they exceed 2 percent of the individual's adjusted gross income.

In general, taxpayers are allowed a deduction for charitable contributions, subject to certain limitations. The deduction allowed an individual generally cannot exceed 50 percent of the individual's adjusted gross income for the taxable year. The deduction allowed a corporation generally cannot exceed 10 percent of the corporation's taxable income. Excess contributions are carried forward for 5 years.

A partner's distributive share of a partnership's miscellaneous itemized deductions and charitable contributions are separately reported to the partner.

Credits in general

Each partner is allowed his distributive share of credits against his taxable income. A refundable credit for gasoline used for exempt purposes is allowed. Nonrefundable credits for clinical testing expenses for certain drugs for rare diseases, for producing fuel from nonconventional sources, and for the general business credit are also allowed. The general business credit includes the investment credit (which in turn includes the rehabilitation credit), the targeted jobs credit, the alcohol fuels credit, the research credit, and the low-income housing credit.

The credits for clinical testing expenses and for the production of fuel from nonconventional sources are limited to the excess of regular tax over tentative minimum tax. Excess credits generally cannot be carried to another taxable year. The amount of general business credit allowable in a taxable year is limited to the excess of a partner's net income over the greater of first, the tentative minimum tax for the year or second, 25 percent of the taxpayer's net regular tax liability in excess of $25,000. The general business credit in excess of this amount is carried back 3 years and forward 15 years.

The benefit of the investment credit and the low-income housing credit is recaptured if, within a specified time period, the partner transfers his partnership interest or the partnership converts or transfers the property for which the credit was allowed.

Foreign taxes

The foreign tax credit generally allows U.S. taxpayers to reduce U.S. income tax on foreign income by the amount of foreign income taxes paid or accrued with respect to that income. In lieu of electing the foreign tax credit, a taxpayer may deduct foreign taxes. The total amount of the credit may not exceed the same proportion of the taxpayer's U.S. tax which the taxpayer's foreign source taxable income bears to the taxpayer's worldwide taxable income for the taxable year.

Unrelated business taxable income

Tax-exempt organizations are subject to tax on income from unrelated businesses. Certain types of income (such as dividends, interest and certain rental income) are not treated as unrelated business taxable income. Thus, for a partner that is an exempt organization, whether partnership income is unrelated business taxable income depends on the character of the underlying income. Income from a publicly traded partnership, however, is treated as unrelated business taxable income regardless of the character of the underlying income.

Special rules related to oil and gas activities

Taxpayers involved in the search for and extraction of crude oil and natural gas are subject to certain special tax rules. As a result, in the case of partnerships engaged in such activities, certain specific information is separately reported to partners.

A taxpayer who owns an economic interest in a producing deposit of natural resources (including crude oil and natural gas) is permitted to claim a deduction for depletion of the deposit as the minerals are extracted. In the case of oil and gas produced in the United States, a taxpayer generally is permitted to claim the greater of a deduction for cost depletion or percentage depletion. Cost depletion is computed by multiplying a taxpayer's adjusted basis in the depletable property by a fraction, the numerator of which is the amount of current year production from the property and the denominator of which is the property's estimated reserves as of the beginning of that year. Percentage depletion is equal to a specified percentage (generally, 15 percent in the case of oil and gas) of gross income from production. Cost depletion is limited to the taxpayer's basis in the depletable property; percentage depletion is not so limited. Once a taxpayer has exhausted its basis in the depletable property, it may continue to claim percentage depletion deductions (generally referred to as "excess percentage depletion").

Certain limitations apply to the deduction for oil and gas percentage depletion. First, percentage depletion is not available to oil and gas producers who also engage (directly or indirectly) in significant levels of oil and gas retailing or refining activities (so-called integrated producers of oil and gas). Second, the deduction for percentage depletion may be claimed by a taxpayer only with respect to up to 1,000 barrels-per-day of production. Third, the percentage depletion deduction may not exceed 100 percent of the taxpayer's net income for the taxable year from the depletable oil and gas property. Fourth, a percentage depletion deduction may not be claimed to the extent that it exceeds 65 percent of the taxpayer's pre-percentage depletion taxable income.

In the case of a partnership that owns depletable oil and gas properties, the depletion allowance is computed separately by the partners and not by the partnership. In computing a partner's basis in his partnership interest, basis is increased by the partner's share of any partnership-related excess percentage depletion deductions and is decreased (but not below zero) by the partner's total amount of depletion deductions attributable to partnership property.

Intangible drilling and development costs [IDC's] incurred with respect to domestic oil and gas wells generally may be deducted at the election of the taxpayer. In the case of integrated producers, no more than 70 percent of IDC's incurred during a taxable year may be deducted. IDC's not deducted are capitalized and generally are either added to the property's basis and recovered through depletion deductions or amortized on a straight-line basis over a 60-month period.

The special treatment granted to IDC's incurred in the pursuit of oil and gas may give rise to an item of tax preference or (in the case of corporate taxpayers) an adjusted current earnings [ACE] adjustment for the alternative minimum tax. The tax preference item is based on a concept of "excess IDC's." In general, excess IDC's are the excess of IDC's deducted for the taxable year over the amount of those IDC's that would have been deducted had they been capitalized and amortized on a straight-line basis over 120 months commencing with the month production begins from the related well. The amount of tax preference is then computed as the difference between the excess IDC amount and 65 percent of the taxpayer's net income from oil and gas (computed without a deduction for excess IDC's). For IDC's incurred in taxable years beginning after 1992, the ACE adjustment related to IDC's is repealed for taxpayers other than integrated producers. Moreover, beginning in 1993, the IDC tax preference generally is repealed for taxpayers other than integrated producers. In this case, however, the repeal of the excess IDC preference may not result in more than a 40 percent reduction (30 percent for taxable years beginning in 1993) in the amount of the taxpayer's alternative minimum taxable income computed as if that preference had not been repealed.

Passive losses

The passive loss rules generally disallow deductions and credits from passive activities to the extent they exceed income from passive activities. Losses not allowed in a taxable year are suspended and treated as current deductions from passive activities in the next taxable year. These losses are allowed in full when a taxpayer disposes of the entire interest in the passive activity to an unrelated person in a taxable transaction. Passive activities include trade or business activities in which the taxpayer does not materially participate. (Limited partners generally do not materially participate in the activities of a partnership.) Passive activities also include rental activities (regardless of the taxpayer's material participation).[103] Portfolio income (such as interest and dividends), and expenses allocable to such income, are not treated as income or loss from a passive activity.

The $25,000 allowance also applies to low-income housing and rehabilitation credits (on a deduction equivalent basis), regardless of whether the taxpayer claiming the credit actively participates in the rental real estate activity generating the credit. In addition, the income phaseout range for the $25,000 allowance for rehabilitation credits is $200,000 to $250,000 (rather than $100,000 to $150,000). For interests acquired after December 31, 1989 in partnerships holding property placed in service after that date, the $25,000 deduction-equivalent allowance is permitted for the low-income housing credit without regard to the taxpayer's income.

A partnership's operations may be treated as multiple activities for purposes of the passive loss rules. In such case, the partnership must separately report items of income and deductions from each of its activities.

Income, loss and other items from a publicly traded partnership are treated as separate from income and loss from any other publicly traded partnership, and also as separate from any income or loss from passive activities.

[103] An individual who actively participates in a rental real estate activity and holds at least a 10-percent interest may deduct up to $25,000 of passive losses. The $25,000 amount phases out as the individual's income increases from $100,000 to $150,000.

The Omnibus Budget Reconciliation Act of 1993 added a rule, effective for taxable years beginning after December 31, 1993, treating a taxpayer's rental real estate activities in which he materially participates as not subject to limitation under the passive loss rules if the taxpayer meets eligibility requirements relating to real property trades or businesses in which he performs services (sec. 469(c)(7)). Real property trade or business means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business. An individual taxpayer generally meets the eligibility requirements if first, more than half of the personal services the taxpayer performs in trades or business during the taxable year are performed in real property trades or businesses in which the taxpayer materially participates, and second, such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates.

REMIC's

A tax is imposed on partnerships holding a residual interest in a real estate mortgage investment conduit [REMIC]. The amount of the tax is the amount of excess inclusions allocable to partnership interests owned by certain tax-exempt organizations ("disqualified organizations") multiplied by the highest corporate tax rate.

Contribution of property to a partnership

In general, a partner recognizes no gain or loss upon the contribution of property to a partnership. However, income, gain, loss and deduction with respect to property contributed to a partnership by a partner must be allocated among the partners so as to take into account the difference between the basis of the property to the partnership and its fair market value at the time of contribution. In addition, the contributing partner must recognize gain or loss equal to such difference if the property is distributed to another partner within 5 years of its contribution (sec. 704(c)), or if other property is distributed to the contributor within the 5-year period (sec. 737).

Election of optional basis adjustments

In general, the transfer of a partnership interest or a distribution of partnership property does not affect the basis of partnership assets. A partnership, however, may elect to make certain adjustments in the basis of partnership property (sec. 754). Under a section 754 election, the transfer of a partnership interest generally results in an adjustment in the partnership's basis in its property for the benefit of the transferee partner only, to reflect the difference between that partner's basis for his interest and his proportionate share of the adjusted basis of partnership property (sec. 743(b)). Also under the election, a distribution of property to a partner in certain cases results in an adjustment in the basis of other partnership property (sec. 734(b)).

Terminations

A partnership terminates if either first, all partners cease carrying on the business, financial operation or venture of the partnership, or second, within a 12-month period 50 percent or more of the total partnership interests are sold or exchanged (sec. 708).

Reasons for Change

The requirement that each partner take into account separately his distributive share of a partnership's items of income, gain, loss, deduction and credit can result in the reporting of a large number of items to each partner. The schedule K–1, on which such items are reported, contains space for more than 40 items. Reporting so many separately stated items is burdensome for individual investors with relatively small, passive interests in large partnerships. In many respects such investments are indistinguishable from those made in corporate stock or mutual funds, which do not require reporting of numerous separate items.

In addition, the number of items reported under the current regime makes it difficult for the Internal Revenue Service to match items reported on the K–1 against the partner's income tax return. Matching is also difficult because items on the K–1 are often modified or limited at the partner level before appearing on the partner's tax return.

By significantly reducing the number of items that must be separately reported to partners, the provision eases the reporting burden of partners and facilitates matching by the IRS. Moreover, it is understood that the Internal Revenue Service is considering restricting the use of substitute reporting forms by large partnerships. Reduction of the number of items makes possible a short standardized form.

Explanation of Provisions

In general

The bill modifies the tax treatment of a large partnership (generally, a partnership with at least 250 partners, or an electing partnership with at least 100 partners) and its partners. The provision provides that each partner takes into account separately the partner's distributive share of the following items, which are determined at the partnership level: First, taxable income or loss from passive loss limitation activities; second, taxable income or loss from other activities (e.g., portfolio income or loss); third, net capital gain or loss to the extent allocable to passive loss limitation activities and other activities; fourth, tax-exempt interest; fifth, net alternative minimum tax adjustment separately computed for passive loss limitation activities and other activities; sixth, general credits; seventh, low-income housing credit; eighth, rehabilitation credit; ninth, credit for producing fuel from a nonconventional source; tenth, creditable foreign taxes and foreign source items; and eleventh, any other items to the extent that the Secretary determines that separate treatment of such items is appropriate.[104] Separate treatment may be appropriate, for example, should changes in the law necessitate such treatment for any items.

Under the bill, the taxable income of a large partnership is computed in the same manner as that of an individual, except that the items described above are separately stated and certain modifications are made. These modifications include disallowing the deduction for personal exemptions, the net operating loss deduction and certain itemized deductions.[105] All limitations and other provisions affecting the computation of taxable income or any credit (except for the at risk, passive loss and itemized deduction limitations, and any other provision specified in regulations) are applied at the partnership (and not the partner) level.

All elections affecting the computation of taxable income or any credit generally are made by the partnership.

Capital gains

Under the bill, netting of capital gains and losses occurs at the partnership level. A partner in a large partnership takes into account separately his distributive share of the partnership's net capital gain or net capital loss.[106] Such net capital gain or loss is treated as long-term capital gain or loss.

Any excess of net short-term capital gain over net long-term capital loss is consolidated with the partnership's other taxable income and is not separately reported.

A partner's distributive share of the partnership's net capital gain is allocated between passive loss limitation activities and other activities. The net capital gain is allocated to passive loss limitation activities to the extent of net capital gain from sales and exchanges of property used in connection with such activities, and any excess is allocated to other activities. A similar rule applies for purposes of allocating any net capital loss.

Any gains and losses of the partnership under section 1231 are netted at the partnership level. Net gain is treated as long-term capital gain and is subject to the rules described above. Net loss is treated as ordinary loss and consolidated with the partnership's other taxable income.

Deductions

The bill contains two special rules for deductions. First, miscellaneous itemized deductions are not separately reported to partners. Instead, 70 percent of the amount of such deductions is disallowed at the partnership level;[107] the remaining 30 percent is al-

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[104] In determining the amounts required to be separately taken into account by a partner, those provisions of the large partnership rules governing computations of taxable income would be applied separately with respect to that partner by taking into account that partner's distributive share of the partnership's items of income, gain, loss, deduction or credit. This rule permits partnerships to make otherwise valid special allocations of partnership items to partners.

[105] A large partnership would be allowed a deduction under section 212 for expenses incurred for the production of income, subject to 70-percent disallowance. No income from a large partnership would be treated as fishing or farming income.

[106] The term "net capital gain" has the same meaning as in section 1222(11). The term "net capital loss" means the excess of the losses from sales or exchanges of capital assets over the gains from sales or exchanges of capital assets. Thus, the partnership cannot offset any portion of capital losses against ordinary income.

[107] The "70 percent" figure is intended to approximate the amount of such deductions that would be denied at the partner level as a result of the two-percent floor.

lowed at the partnership level in determining taxable income, and is not subject to the two-percent floor at the partner level.

Second, charitable contributions are not separately reported to partners under the bill. Instead, the charitable contribution deduction is allowed at the partnership level in determining taxable income, subject to the limitations that apply to corporate donors.

Credits in general

Under the bill, general credits are separately reported to partners as a single item. General credits are any credits other than the low-income housing credit, the rehabilitation credit and the credit for producing fuel from a nonconventional source. A partner's distributive share of general credits is taken into account as a current year general business credit. Thus, for example, the credit for clinical testing expenses is subject to the present law limitations on the general business credit. The refundable credit for gasoline used for exempt purposes and the refund or credit for undistributed capital gains of a regulated investment company are allowed to the partnership, and thus are not separately reported to partners.

In recognition of their special treatment under the passive loss rules, the low-income housing and rehabilitation credits are separately reported.[108] In addition, the credit for producing fuel from a nonconventional source is separately reported.

The bill imposes credit recapture at the partnership level and determines the amount of recapture by assuming that the credit fully reduced taxes. Such recapture is applied first to reduce the partnership's current year credit, if any; the partnership is liable for any excess over that amount. Under the bill, the transfer of an interest in a large partnership does not trigger recapture.

Foreign taxes

The bill retains present-law treatment of foreign taxes. The partnership reports to the partner creditable foreign taxes and the source of any income, gain, loss or deduction taken into account by the partnership. Elections, computations and limitations are made by the partner.

Tax-exempt interest

The bill retains present-law treatment of tax-exempt interest. Interest on a State or local bond is separately reported to each partner.

Unrelated business taxable income

The bill retains present-law treatment of unrelated business taxable income. Thus, a tax-exempt partner's distributive share of partnership items is taken into account separately to the extent necessary to comply with the rules governing such income.

[108] It is understood that the rehabilitation and low-income housing credits which are subject to the same passive loss rules (i.e., in the case of the low-income housing credit, where the partnership interest was acquired or the property was placed in service before 1990) could be reported together on the same line.

Passive losses

Under the bill, a partner in a large partnership takes into account separately his distributive share of the partnership's taxable income or loss from passive loss limitation activities. The term "passive loss limitation activity" means any activity involving the conduct of a trade or business (including any activity treated as a trade or business under sec. 469(c)(5) or (6)) and any rental activity. A partner's share of a large partnership's taxable income or loss from passive loss limitation activities is treated as an item of income or loss from the conduct of a trade or business which is a single passive activity, as defined in the passive loss rules. Thus, a large partnership generally is not required to separately report items from multiple activities.

A partner in a large partnership also takes into account separately his distributive share of the partnership's taxable income or loss from activities other than passive loss limitation activities. Such distributive share is treated as an item of income or expense with respect to property held for investment. Thus, portfolio income (e.g., interest and dividends) is reported separately and is reduced by portfolio deductions and allocable investment interest expense.

In the case of a partner holding an interest in a large partnership which is not a limited partnership interest, such partner's distributive share of any items are taken into account separately to the extent necessary to comply with the passive loss rules. Thus, for example, income of a large partnership is not treated as passive income with respect to the general partnership interest of a partner who materially participates in the partnership's trade or business.

Under the bill, the requirement that the passive loss rule be separately applied to each publicly traded partnership (sec. 469(k) of the code) continues to apply.

Alternative minimum tax

Under the bill, alternative minimum tax [AMT] adjustments and preferences are combined at the partnership level. A large partnership would report to partners a net AMT adjustment separately computed for passive loss limitation activities and other activities. In determining a partner's alternative minimum taxable income, a partner's distributive share of any net AMT adjustment is taken into account instead of making separate AMT adjustments with respect to partnership items. The net AMT adjustment is determined by using the adjustments applicable to individuals (in the case of partners other than corporations), and by using the adjustments applicable to corporations (in the case of corporate partners). Except as provided in regulations, the net AMT adjustment is treated as a deferral preference for purposes of the section 53 minimum tax credit.

Discharge of indebtedness income

If a large partnership has income from the discharge of any indebtedness, such income is separately reported to each partner. In addition, the rules governing such income (sec. 108) are applied without regard to the large partnership rules. Partner-level elections under section 108 are made by each partner separately. Thus, for example, the large partnership provisions do not affect section 108(d)(6), which provides that certain section 108 rules apply at the partner level, or section 108(b)(5), which provides for an election to reduce the basis of depreciable property. The large partnership provisions also do not affect the election under 108(c) (added by the Omnibus Budget Reconciliation Act of 1993) to exclude discharge of indebtedness income with respect to qualified real property business indebtedness.

REMICs

For purposes of the tax on partnerships holding residual interests in REMICs, all interests in a large partnership are treated as held by disqualified organizations. Thus, a large partnership holding a residual interest in a REMIC is subject to a tax equal to the excess inclusions multiplied by the highest corporate rate. The amount subject to tax is excluded from partnership income.

Election of optional basis adjustments

Under the bill, a large partnership may still elect to adjust the basis of partnership assets with respect to transferee partners. The computation of a large partnership's taxable income is made without regard to the section 743(b) adjustment. As under present law, the section 743(b) adjustment is made only with respect to the transferee partner. In addition, a large partnership is permitted to adjust the basis of partnership property under section 734(b) if property is distributed to a partner, as under present law.

Terminations

The bill provides that a large partnership does not terminate for tax purposes solely because 50 percent of its interests are sold or exchanged within a 12-month period.

Partnerships and partners subject to large partnership rules

Definition of large partnership

A "large partnership" is any partnership with at least 250 partners in any preceding taxable year beginning after December 31, 1995.[109] Any partnership treated as a large partnership for a taxable year is so treated for all succeeding years, even if the number of partners falls below 250. Regulations may provide, however, that if the number of partners in any taxable year falls below 100, the partnership is not treated as a large partnership. Partnerships with at least 100 partners can elect to be treated as large partnerships. The election applies to the year for which made and all subsequent years and cannot be revoked without the Secretary's consent.

Special rules for certain service partnerships

A large partnership does not include any partnership if substantially all the partners are: First, individuals performing substantial

[109] The number of partners is determined by counting only persons directly holding partnership interests in the taxable year, including persons holding through nominees; persons holding indirectly (e.g., through another partnership) are not counted. It is not necessary for a partnership to have 250 or more partners at any one time in a taxable year for the partnership to constitute a large partnership.

services in connection with the partnership's activities, or personal service corporations the owner-employees of which perform such services; second, retired partners who had performed such services; or third, spouses of partners who had performed such services. In addition, the term "partner" does not include any individual performing substantial services in connection with the partnership's activities and holding a partnership interest, or an individual who formerly performed such services and who held a partnership interest at the time the individual performed such services.

Exclusion for commodity partnerships

The large partnership rules do not apply to any partnership the principal activity of which is the buying and selling of commodities (not described in sec. 1221(1)), or options, futures or forwards with respect to commodities.

Special rules for partnerships holding oil and gas properties

Election to use simplified reporting

In general, a large partnership that otherwise meets the qualifications for simplified reporting is not required to report information to its partners under the rules of that regime if it is substantially engaged in oil and gas related activities. Rather, such a partnership continues to report information to its partners as under present law. The bill permits such a partnership, however, to elect to utilize the simplified reporting regime, as modified for oil and gas purposes. If an election is made for any taxable year, it will also apply for all subsequent taxable years unless revoked with the consent of the Secretary.

A partnership is considered to be substantially engaged in oil and gas activities if at least 25 percent of the average value of its assets during the taxable year consists of oil or gas properties.[110] In making this determination, a partnership is treated as owning its proportionate share of assets of any partnership in which it holds an interest.

Simplified reporting treatment of large partnerships with oil and gas activities

The bill provides special rules for large partnerships with oil and gas activities that operate under the simplified reporting regime (i.e., either first, large partnerships that are substantially engaged in oil and gas activities and which elect to use the regime, or second, large partnerships that are not substantially engaged in oil and gas operations, but do have some oil and gas activities). These partnerships are collectively referred to herein as "oil and gas large partnerships." Generally, the bill provides that an oil and gas large partnership reports information to its partners under the general simplified large partnership reporting regime described above. To prevent the extension of percentage depletion deductions to persons excluded therefrom under present law, however, certain partners are treated as disqualified persons under the bill.

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[110] For this purpose, "oil or gas properties" means the mineral interests in oil or gas which are of a character with respect to which a deduction for depletion is allowable under section 611.

The treatment of a disqualified person's distributive share of any item of income, gain, loss, deduction, or credit attributable to any partnership oil or gas property is determined under the bill without regard to the special rules applicable to large partnerships. Thus, an oil and gas large partnership reports information related to oil and gas activities to a partner who is a disqualified person in the same manner and to the same extent that it reports such information to that partner under present law. The simplified reporting rules of the bill, however, apply with respect to reporting such a partner's share of items not related to oil and gas activities.

The bill defines two categories of taxpayers as disqualified persons. The first category encompasses taxpayers who do not qualify for the deduction for percentage depletion under section 613A (i.e., integrated producers of oil and gas). The second category includes any person whose average daily production of oil and gas (for purposes of determining the depletable oil and natural gas quantity under section 613A(c)(2)) is at least 500 barrels for its taxable year in which (or with which) the partnership's taxable year ends. In making this computation, all production of domestic crude oil and natural gas attributable to the partner is taken into account, including such partner's proportionate share of any production of the large partnership.

A taxpayer that falls within a category of disqualified person has the responsibility of notifying any large partnership in which it holds a direct or indirect interest (e.g., through a pass-through entity) of its status as such. Thus, for example, if an integrated producer owns an interest in a partnership which in turn owns an interest in an oil and gas large partnership, it is responsible for providing the management of the large partnership information regarding its status as a disqualified person and details regarding its indirect interest in the large partnership.

Under the bill, an oil and gas large partnership computes its deduction for oil and gas depletion under the general statutory rules (subject to certain exceptions described below) under the assumptions that the partnership is the taxpayer and that it qualifies for the percentage depletion deduction. The amount of the depletion deduction, as well as other oil and gas related items, generally are reported to each partner (other than to partners who are disqualified persons) as components of that partner's distributive share of taxable income or loss from passive loss limitation activities. The bill provides that in computing the partnership's oil and gas percentage depletion deduction, the 1,000-barrel-per-day limitation does not apply. In addition, an oil and gas large partnership is allowed to compute percentage depletion under the bill without applying the 65-percent-of-taxable-income limitation under section 613A(d)(1).

As under present law, an election to deduct IDC's under section 263(c) is made at the partnership level. Since the bill treats those taxpayers required by the code (sec. 291) to capitalize 30 percent of IDC's as disqualified persons, an oil and gas large partnership may pass through a full deduction of IDC's to its partners who are not disqualified persons. In contrast to present law, an oil and gas large partnership also has the responsibility with respect to its partners who are not disqualified persons for making an election under section 59(e) to capitalize and amortize certain specified IDC's. Partners who are disqualified persons are permitted to make their own separate section 59(e) elections under the bill.

Consistent with the general reporting regime for large partnerships, the bill provides that a single AMT adjustment (under either corporate or noncorporate principles, as the case may be) is made and reported to the partners (other than disqualified persons) of an oil and gas large partnership as a separate item. This separately-reported item is affected by the limitation on the repeal of the tax preference for excess IDC's. For purposes of computing this limitation, the bill treats an oil and gas large partnership as the taxpayer. Thus, the limitation on repeal of the IDC preference is applied at the partnership level and is based on the cumulative reduction in the partnership's alternative minimum taxable income resulting from repeal of that preference.

The bill provides that in making partnership-level computations, any item of income, gain, loss, deduction, or credit attributable to a partner who is a disqualified person is disregarded. For example, in computing the partnership's net income from oil and gas for purposes of determining the IDC preference (if any) to be reported to partners who are not disqualified persons as part of the AMT adjustment, disqualified persons' distributive shares of the partnership's net income from oil and gas are not to be taken into account.

Regulatory authority

The Secretary of the Treasury is granted authority to prescribe such regulations as may be appropriate to carry out the purposes of the provisions.

Effective Date

The provisions generally applies to partnership taxable years beginning after December 31, 1995.

2. Simplified audit procedures for large partnerships (sec. 14302 of the bill and secs. 6240, 6241, 6242, 6245, 6246, 6247, 6249, 6251, 6255, and 6256 of the code)

Present Law

In general

Prior to 1982, regardless of the size of a partnership, adjustments to a partnership's items of income, gain, loss, deduction, or credit had to be made in separate proceedings with respect to each partner individually. Because a large partnership sometimes had many partners located in different audit districts, adjustments to items of income, gains, losses, deductions, or credits of the partnership had to be made in numerous actions in several jurisdictions, sometimes with conflicting outcomes.

The Tax Equity and Fiscal Responsibility Act of 1982 [TEFRA] established unified audit rules applicable to all but certain small (10 or fewer partners) partnerships. These rules require the tax treatment of all "partnership items" to be determined at the partnership, rather than the partner, level. Partnership items are those items that are more appropriately determined at the partnership level than at the partner level, as provided by regulations.

Under the TEFRA rules, a partner must report all partnership items consistently with the partnership return or must notify the IRS of any inconsistency. If a partner fails to report any partnership item consistently with the partnership return, the IRS may make a computational adjustment and immediately assess any additional tax that results.

Administrative proceedings

Under the TEFRA rules, a partner must report all partnership items consistently with the partnership return or must notify the IRS of any inconsistency. If a partner fails to report any partnership item consistently with the partnership return, the IRS may make a computational adjustment and immediately assess any additional tax that results.

The IRS may challenge the reporting position of a partnership by conducting a single administrative proceeding to resolve the issue with respect to all partners. But the IRS must still assess any resulting deficiency against each of the taxpayers who were partners in the year in which the understatement of tax liability arose.

Any partner of a partnership can request an administrative adjustment or a refund for his own separate tax liability. Any partner also has the right to participate in partnership-level administrative proceedings. A settlement agreement with respect to partnership items binds all parties to the settlement.

Tax matters partner

The TEFRA rules establish the "Tax Matters Partner" as the primary representative of a partnership in dealings with the IRS. The Tax Matters Partner is a general partner designated by the partnership or, in the absence of designation, the general partner with the largest profits interest at the close of the taxable year. If no Tax Matters Partner is designated, and it is impractical to apply the largest profits interest rule, the IRS may select any partner as the Tax Matters Partner.

Notice requirements

The IRS generally is required to give notice of the beginning of partnership-level administrative proceedings and any resulting administrative adjustment to all partners whose names and addresses are furnished to the IRS. For partnerships with more than 100 partners, however, the IRS generally is not required to give notice to any partner whose profits interest is less than one percent.

Adjudication of disputes concerning partnership items

After the IRS makes an administrative adjustment, the Tax Matters Partner (and, in limited circumstances, certain other partners) may file a petition for readjustment of partnership items in the Tax Court, the district court in which the partnership's principal place of business is located, or the Claims Court.

Statute of limitations

The IRS generally cannot adjust a partnership item for a partnership taxable year if more than 3 years have elapsed since the later of the filing of the partnership return or the last day for the filing of the partnership return.

Reasons for Change

Present audit procedures for large partnerships are inefficient and more complex than those for other large entities. The IRS must assess any deficiency arising from a partnership audit against a large number of partners, many of whom cannot easily be located and some of whom are no longer partners. In addition, audit procedures are cumbersome and can be complicated further by the intervention of partners acting individually.

Explanation of Provision

The bill creates a new audit system for large partnerships. The provision defines "large partnership" the same way for audit and reporting purposes (generally partnerships with at least 250 partners) except that certain oil and gas partnerships exempted from the large partnership reporting requirements are large partnerships for the audit rules.

As under present law, large partnerships and their partners are subject to unified audit rules. Thus, the tax treatment of "partnership items" are determined at the partnership, rather than the partner, level. The term "partnership items" is defined as under present law.

Unlike present law, however, partnership adjustments generally will flow through to the partners for the year in which the adjustment takes effect. Thus, the current-year partners' share of current-year partnership items of income, gains, losses, deductions, or credits will be adjusted to reflect partnership adjustments that take effect in that year. The adjustments generally will not affect prior-year returns of any partners (except in the case of changes to any partner's distributive shares).

In lieu of flowing an adjustment through to its partners, the partnership may elect to pay an imputed underpayment. The imputed underpayment generally is calculated by netting the adjustments to the income and loss items of the partnership and multiplying that amount by the highest tax rate (whether individual or corporate). A partner may not file a claim for credit or refund of his allocable share of the payment. A partnership may make this election only if it meets requirements set forth in Treasury regulations designed to ensure payment (for example, in the case of a foreign partnership).

Regardless of whether a partnership adjustment flows through to the partners, an adjustment must be offset if it requires another adjustment in a year after the adjusted year and before the year the offsetted adjustment takes effect. For example, if a partnership expensed a $1,000 item in year 1, and it was determined in year 4 that the item should have been capitalized and amortized ratably over 10 years, the adjustment in year 4 would be $700, apart from any interest or penalty. (The $900 adjustment for the improper deduction would be offset by $200 of adjustments for amortization deductions.) The year 4 partners would be required to include an additional $700 in income for that year. The partnership may ratably amortize the remaining $700 of expenses in years 4–10.

In addition, the partnership, rather than the partners individually, generally is liable for any interest and penalties that result from a partnership adjustment. Interest is computed for the period beginning on the return due date for the adjusted year and ending on the earlier of the return due date for the partnership taxable year in which the adjustment takes effect or the date the partnership pays the imputed underpayment. Thus, in the above example, the partnership would be liable for 4 years' worth of interest (on a declining principal amount).

Penalties (such as the accuracy and fraud penalties) are determined on a year-by-year basis (without offsets) based on an imputed underpayment. All accuracy penalty criteria and waiver criteria (such as reasonable cause, substantial authority, etc.) are determined as if the partnership were a taxable individual. Accuracy and fraud penalties are assessed and accrue interest in the same manner as if asserted against a taxable individual.

Any payment (for Federal income taxes, interest, or penalties) that a large partnership is required to make is nondeductible.

If a partnership ceases to exist before a partnership adjustment takes effect, the former partners are required to take the adjustment into account, as provided by regulations. Regulations are also authorized to prevent abuse and to enforce efficiently the audit rules in circumstances that present special enforcement considerations (such as partnership bankruptcy).

Administrative proceedings

Under the large partnership audit rules, a partner is not permitted to report any partnership items inconsistently with the partnership return, even if the partner notifies the IRS of the inconsistency. The IRS could treat a partnership item that was reported inconsistently by a partner as a mathematical or clerical error and immediately assess any additional tax against that partner.

As under present law, the IRS could challenge the reporting position of a partnership by conducting a single administrative proceeding to resolve the issue with respect to all partners. Unlike under present law, however, partners will have no right individually to participate in settlement conferences or to request a refund.

Partnership representative

The bill requires each large partnership to designate a partner or other person to act on its behalf. If a large partnership fails to designate such a person, the IRS is permitted to designate any one of the partners as the person authorized to act on the partnership's behalf. After the IRS's designation, a large partnership could still designate a replacement for the IRS-designated partner.

Notice requirements

Unlike under present law, the IRS is not required to give notice to individual partners of the commencement of an administrative proceeding or of a final adjustment. Instead, the IRS is authorized to send notice of a partnership adjustment to the partnership itself by certified or registered mail. The IRS could give proper notice by mailing the notice to the last known address of the partnership, even if the partnership had terminated its existence.

Adjudication of disputes concerning partnership items

As under present law, an administrative adjustment could be challenged in the Tax Court, the district court in which the partnership's principal place of business is located, or the Claims Court. However, only the partnership, and not partners individually, can petition for a readjustment of partnership items.

If a petition for readjustment of partnership items is filed by the partnership, the court with which the petition is filed will have jurisdiction to determine the tax treatment of all partnership items of the partnership for the partnership taxable year to which the notice of partnership adjustment relates, and the proper allocation of such items among the partners. Thus, the court's jurisdiction is not limited to the items adjusted in the notice.

Statute of limitations

Absent an agreement to extend the statute of limitations, the IRS generally could not adjust a partnership item of a large partnership more than 3 years after the later of the filing of the partnership return or the last day for the filing of the partnership return. Special rules apply to false or fraudulent returns, a substantial omission of income, or the failure to file a return. The IRS would assess and collect any deficiency of a partner that arises from any adjustment to a partnership item subject to the limitations period on assessments and collection applicable to the year the adjustment takes effect (secs. 6248, 6501, and 6502).

Regulatory authority

The Secretary of the Treasury is granted authority to prescribe regulations as may be necessary to carry out the simplified audit procedure provisions, including regulations to prevent abuse of the provisions through manipulation. The regulations may include rules that address transfers of partnership interests, in anticipation of a partnership adjustment, to persons who are tax-favored (e.g., corporations with net operating losses, tax-exempt organizations, and foreign partners) or persons who are expected to be unable to pay tax (e.g., shell corporations). For example, if prior to the time a partnership adjustment takes effect, a taxable partner transfers a partnership interest to a nonresident alien to avoid the tax effect of the partnership adjustment, the rules may provide, among other things, that income related to the partnership adjustment is treated as effectively connected taxable income, that the partnership adjustment is treated as taking effect before the partnership interest was transferred, or that the former partner is treated as a current partner to whom the partnership adjustment is allocated.

Effective Date

The provision applies to partnership taxable years beginning after December 31, 1995.

3. Due date for furnishing information to partners of large partnerships (sec. 14303 of the bill and sec. 6031(b) of the code)

Present Law

A partnership required to file an income tax return with the Internal Revenue Service must also furnish an information return to each of its partners on or before the day on which the income tax return for the year is required to be filed, including extensions. Under regulations, a partnership must file its income tax return on or before the 15th day of the 4th month following the end of the partnership's taxable year (on or before April 15, for calendar year partnerships). This is the same deadline by which most individual partners must file their tax returns.

Reasons for Change

Information returns that are received on or shortly before April 15 (or later) are difficult for individuals to use in preparing their tax returns (or in computing their payments) that are due on that date.

Explanation of Provision

The bill provides that a large partnership must furnish information returns to partners by the first March 15 following the close of the partnership's taxable year. Large partnerships are only those partnerships subject to the simplified reporting rules for large partnerships (generally, those with at least 250 partners, or electing partnerships with at least 100 partners).

The provision also provides that, if the partnership is required to provide copies of the information returns to the Internal Revenue Service on magnetic media, each schedule (such as each Schedule K–1) with respect to each partner is treated as a separate information return with respect to the corrective periods and penalties that are generally applicable to all information returns.

Effective Date

The provision is effective for partnership taxable years beginning after December 31, 1995.

4. Partnership returns required on magnetic media (sec. 14304 of the bill and sec. 6011 of the code)

Present Law

Partnerships are permitted, but not required, to provide the tax return of the partnership (form 1065), as well as copies of the schedules sent to each partner (form K–1), to the Internal Revenue Service on magnetic media.

Reasons for Change

Most entities that file large numbers of documents with the Internal Revenue Service must do so on magnetic media. Conforming the reporting provisions for large partnerships to the generally applicable information reporting rules will facilitate integration of partnership information into already existing data systems.

Explanation of Provision

The bill provides generally that any partnership is required to provide the tax return of the partnership (form 1065), as well as copies of the schedule sent to each partner (form K–1), to the Internal Revenue Service on magnetic media. An exception is provided for partnerships with 100 or fewer partners.

Effective Date

The provision is effective for partnership taxable years beginning after December 31, 1995.

5. Treatment of partnership items of individual retirement accounts (sec. 14305 of the bill and sec. 6012 of the code)

Present Law

Return filing requirements

An individual retirement account [IRA] is a trust which generally is exempt from taxation except for the taxes imposed on income from an unrelated trade or business. A fiduciary of a trust that is exempt from taxation (but subject to the taxes imposed on income from an unrelated trade or business) generally is required to file a return on behalf of the trust for a taxable year if the trust has gross income of $1,000 or more included in computing unrelated business taxable income for that year (Treas. Reg. sec. 1.6012–3(a)(5)).

Unrelated business taxable income is the gross income (including gross income from a partnership) derived by an exempt organization from an unrelated trade or business, less certain deductions which are directly connected with the carrying on of such trade or business (sec. 512(a)(1)). In calculating unrelated business taxable income, exempt organizations (including IRA's) generally also are permitted a specific deduction of $1,000 (sec. 512(b)(12)).

Unified audits of partnerships

All but certain small partnerships are subject to unified audit rules established by the Tax Equity and Fiscal Responsibility Act of 1982. These rules require the tax treatment of all "partnership items" to be determined at the partnership, rather than the partner, level. Partnership items are those items that are more appropriately determined at the partnership level than at the partner level, including such items as gross income and deductions of the partnership.

Reasons for Change

Under present law, tax returns often must be filed for IRA's that have no taxable income and, consequently, no tax liability. The filing of these returns by taxpayers, and the processing of these returns by the IRS, impose significant costs. Imposing this burden is unnecessary to the extent that the income of the IRA has been derived from an interest in a partnership that is subject to partnership-level audit rules. In these circumstances, the appropriateness of any deductions may be determined at the partnership level, and an additional filing is unnecessary to facilitate this determination.

Explanation of Provision

The bill modifies the filing threshold for an IRA with an interest in a partnership that is subject to the partnership-level audit rules. A fiduciary of such an IRA could treat the trust's share of partnership taxable income as gross income, for purposes of determining whether the trust meets the $1,000 gross income filing threshold. A fiduciary of an IRA that receives taxable income from a partnership that is subject to partnership-level audit rules of less than $1,000 (before the $1,000 specific deduction) is not required to file an income tax return if the IRA does not have any other income from an unrelated trade or business.

Effective Date

The provision applies to taxable years beginning after December 31, 1995.

B. Other Partnership Audit Rules

1. Treatment of partnership items in deficiency proceedings (sec. 14311 of the bill and sec. 6234 of the code)

Present Law

Partnership proceedings under rules enacted in TEFRA [111] must be kept separate from deficiency proceedings involving the partners in their individual capacities. Prior to the Tax Court's opinion in *Munro* v. *Commissioner*, 92 T.C. 71 (1989), the IRS computed deficiencies by assuming that all items that were subject to the TEFRA partnership procedures were correctly reported on the taxpayer's return. However, where the losses claimed from TEFRA partnerships were so large that they offset any proposed adjustments to nonpartnership items, no deficiency could arise from a non-TEFRA proceeding, and if the partnership losses were subsequently disallowed in a partnership proceeding, the non-TEFRA adjustments might be uncollectible because of the expiration of the statute of limitations with respect to nonpartnership items.

Faced with this situation in *Munro*, the IRS issued a notice of deficiency to the taxpayer that presumptively disallowed the taxpayer's TEFRA partnership losses for computational purposes only. Although the Tax Court ruled that a deficiency existed and that the court had jurisdiction to hear the case, the court disapproved

[111] Tax Equity and Fiscal Responsibility Act of 1982.

of the methodology used by the IRS to compute the deficiency. Specifically, the court held that partnership items (whether income, loss, deduction, or credit) included on a taxpayer's return must be completely ignored in determining whether a deficiency exists that is attributable to nonpartnership items.

Reasons for Change

The opinion in *Munro* creates problems for both taxpayers and the IRS. For example, a taxpayer would be harmed in the case where he has invested in a TEFRA partnership and is also subject to the deficiency procedures with respect to nonpartnership item adjustments, since computing the tax liability without regard to partnership items will have the same effect as if the partnership items were disallowed. If the partnership items were losses, the effect will be a greatly increased deficiency for the nonpartnership items. If, when the partnership proceedings are completed, the taxpayer is ultimately allowed any part of the losses, the taxpayer will receive part of the increased deficiency back in the form of an overpayment. However, in the interim, the taxpayer will have been subject to assessment and collection of a deficiency inflated by items still in dispute in the partnership proceeding. In essence, a taxpayer in such a case would be deprived of a prepayment forum with respect to the partnership item adjustments. The IRS would be harmed if a taxpayer's income is primarily from a TEFRA partnership, since the IRS may be unable to adjust nonpartnership items such as medical expense deductions, home mortgage interest deductions on charitable contribution deductions because there would be no deficiency since, under *Munro*, the income must be ignored.

Explanation of Provision

The bill overrules *Munro* and allow the IRS to return to its prior practice of computing deficiencies by assuming that all TEFRA items whose treatment has not been finally determined had been correctly reported on the taxpayer's return. This eliminates the need to do special computations that involve the removal of TEFRA items from a taxpayer's return, and will restore to taxpayers a prepayment forum with respect to the TEFRA items. In addition, the provision provides a special rule to address the factual situation presented in *Munro*.

Specifically, the bill provides a declaratory judgment procedure in the Tax Court for adjustments to an oversheltered return. An oversheltered return is a return that shows no taxable income and a net loss from TEFRA partnerships. In such a case, the IRS is authorized to issue a notice of adjustment with respect to non-TEFRA items, notwithstanding that no deficiency would result from the adjustment. However, the IRS could only issue such a notice if a deficiency would have arisen in the absence of the net loss from TEFRA partnerships.

The Tax Court is granted jurisdiction to determine the correctness of such an adjustment as well as to make a declaration with respect to any other item for the taxable year to which the notice of adjustment relates, except for partnership items and affected items which require partner-level determinations. No tax is due upon such a determination, but a decision of the Tax Court is treated as a final decision, permitting an appeal of the decision by either the taxpayer or the IRS. An adjustment determined to be correct would thus have the effect of increasing the taxable income that is deemed to have been reported on the taxpayer's return. If the taxpayer's partnership items were then adjusted in a subsequent proceeding, the IRS has preserved its ability to collect tax on any increased deficiency attributable to the nonpartnership items.

Alternatively, if the taxpayer chooses not to contest the notice of adjustment within the 90-day period, the bill provides that when the taxpayer's partnership items are finally determined, the taxpayer has the right to file a refund claim for tax attributable to the items adjusted by the earlier notice of adjustment for the taxable year. Although a refund claim is not generally permitted with respect to a deficiency arising from a TEFRA proceeding, such a rule is appropriate with respect to a defaulted notice of adjustment because taxpayers may not challenge such a notice when issued since it does not require the payment of additional tax.

In addition, the bill incorporates a number of provisions intended to clarify the coordination between TEFRA audit proceedings and individual deficiency proceedings. Under these provisions, any adjustment with respect to a nonpartnership item that caused an increase in tax liability with respect to a partnership item would be treated as a computational adjustment and assessed after the conclusion of the TEFRA proceeding. Accordingly, deficiency procedures do not apply with respect to this increase in tax liability, and the statute of limitations applicable to TEFRA proceedings are controlling.

Effective Date

The provision is effective for partnership taxable years ending after the date of enactment.

2. Partnership return to be determinative of audit procedures to be followed (sec. 14312 of the bill and sec. 6231 of the code)

Present Law

TEFRA established unified audit rules applicable to all partnerships, except for partnerships with 10 or fewer partners, each of whom is a natural person (other than a nonresident alien) or an estate, and for which each partner's share of each partnership item is the same as that partner's share of every other partnership item. Partners in the exempted partnerships are subject to regular deficiency procedures.

Reasons for Change

The IRS often finds it difficult to determine whether to follow the TEFRA partnership procedures or the regular deficiency procedures. If the IRS determines that there were fewer than 10 partners in the partnership but was unaware that one of the partners was a nonresident alien or that there was a special allocation made during the year, the IRS might inadvertently apply the wrong procedures and possibly jeopardize any assessment. Permitting the IRS to rely on a partnership's return would simplify the IRS' task.

Explanation of Provision

The bill permits the IRS to apply the TEFRA audit procedures if, based on the partnership's return for the year, the IRS reasonably determines that those procedures should apply. Similarly, the provision permits the IRS to apply the normal deficiency procedures if, based on the partnership's return for the year, the IRS reasonably determines that those procedures should apply.

Effective Date

The provision is effective for partnership taxable years ending after the date of enactment.

3. Provisions relating to statute of limitations

a. Suspend statute when an untimely petition is filed (sec. 14313(a) of the bill and sec. 6229 of the code)

Present Law

In a deficiency case, section 6503(a) provides that if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, the period of limitations on assessment and collection is suspended until the decision of the Tax Court becomes final, and for 60 days thereafter. The counterpart to this provision with respect to TEFRA cases is contained in section 6229(d). That section provides that the period of limitations is suspended for the period during which an action may be brought under section 6226 and, if an action is brought during such period, until the decision of the court becomes final, and for 1 year thereafter. As a result of this difference in language, the running of the statute of limitations in a TEFRA case will only be tolled by the filing of a timely petition whereas in a deficiency case, the statute of limitations is tolled by the filing of any petition, regardless of whether the petition is timely.

Reasons for Change

Under present law, if an untimely petition is filed in a TEFRA case, the statute of limitations can expire while the case is still pending before the court. To prevent this from occurring, the IRS must make assessments against all of the investors during the pendency of the action and if the action is in the Tax Court, presumably abate such assessments if the court ultimately determines that the petition was timely. These steps are burdensome to the IRS and to taxpayers.

Explanation of Provision

The bill conforms the suspension rule for the filing of petitions in TEFRA cases with the rule under section 6503(a) pertaining to deficiency cases. Under the provision, the statute of limitations in TEFRA cases is suspended by the filing of any petition under section 6226, regardless of whether the petition is timely or valid, and the suspension will remain in effect until the decision of the court becomes final, and for 1 year thereafter. Hence, if the statute of limitations is open at the time that an untimely petition is filed, the limitations period would no longer continue to run and possibly expire while the action is pending before the court.

Effective Date

The provision is effective with respect to all cases in which the period of limitations has not expired under present law as of the date of enactment.

b. Suspend statute of limitations during bankruptcy proceedings (sec. 14313(b) of the bill and sec. 6229 of the code)

Present Law

The period for assessing tax with respect to partnership items generally is the longer of the periods provided by section 6229 or section 6501. For partnership items that convert to nonpartnership items, section 6229(f) provides that the period for assessing tax shall not expire before the date which is 1 year after the date that the items become nonpartnership items. Section 6503(h) provides for the suspension of the limitations period during the pendency of a bankruptcy proceeding. However, this provision only applies to the limitations periods provided in sections 6501 and 6502.

Under present law, because the suspension provision in section 6503(h) applies only to the limitations periods provided in section 6501 and 6502, some uncertainty exists as to whether section 6503(h) applies to suspend the limitations period pertaining to converted items provided in section 6229(f) when a petition naming a partner as a debtor in a bankruptcy proceeding is filed. As a result, the limitations period provided in section 6229(f) may continue to run during the pendency of the bankruptcy proceeding, notwithstanding that the IRS is prohibited from making an assessment against the debtor because of the automatic stay provisions of the Bankruptcy Code.

Reasons for Change

The ambiguity in present law makes it difficult for the IRS to adjust partnership items that convert to nonpartnership items by reason of a partner going into bankruptcy. In addition, any uncertainty may result in increased requests for the bankruptcy court to lift the automatic stay to permit the IRS to make an assessment with respect to the converted items.

Explanation of Provision

The bill clarifies that the statute of limitations is suspended for a partner who is named in a bankruptcy petition. The suspension period is for the entire period during which the IRS is prohibited by reason of the bankruptcy proceeding from making an assessment, and for 60 days thereafter. The provision does not purport to create any inference as to the proper interpretation of present law.

Effective Date

The provision is effective with respect to all cases in which the period of limitations has not expired under present law as of the date of enactment.

c. Extend statute of limitations for bankrupt TMP's (sec. 14313(c) of the bill and sec. 6229 of the code)

Present Law

Section 6229(b)(1)(B) provides that the statute of limitations is extended with respect to all partners in the partnership by an agreement entered into between the tax matters partner [TMP] and the IRS. However, Temp. Treas. Reg. secs. 301.6231(a)(7)–1T(1)(4) and 301.6231(c)–7T(a) provide that upon the filing of a petition naming a partner as a debtor in a bankruptcy proceeding, that partner's partnership items convert to nonpartnership items, and if the debtor was the tax matters partner, such status terminates. These rules are necessary because of the automatic stay provision contained in 11 U.S.C. sec. 362(a)(8). As a result, if a consent to extend the statute of limitations is signed by a person who would be the TMP but for the fact that at the time that the agreement is executed the person was a debtor in a bankruptcy proceeding, the consent would not be binding on the other partners because the person signing the agreement was no longer the TMP at the time that the agreement was executed.

Reasons for Change

The IRS is not automatically notified of bankruptcy filings and cannot easily determine whether a taxpayer is in bankruptcy, especially if the audit of the partnership is being conducted by one district and the taxpayer resides in another district, as is frequently the situation in TEFRA cases. If the IRS does not discover that a person signing a consent is in bankruptcy, the IRS may mistakenly rely on that consent. As a result, the IRS may be precluded from assessing any tax attributable to partnership item adjustments with respect to any of the partners in the partnership.

Explanation of Provision

The bill provides that unless the IRS is notified of a bankruptcy proceeding in accordance with regulations, the IRS can rely on a statute extension signed by a person who is the tax matters partner but for the fact that said person was in bankruptcy at the time that the person signed the agreement. Statute extensions granted by a bankrupt TMP in these cases are binding on all of the partners in the partnership. The provision is not intended to create any inference as to the proper interpretation of present law.

Effective Date

The provision is effective for extension agreements entered into after the date of enactment.

4. Expansion of small partnership exception (sec. 14314 of the bill and sec. 6231 of the code)

Present Law

TEFRA established unified audit rules applicable to all partnerships, except for partnerships with 10 or fewer partners, each of whom is a natural person (other than a nonresident alien) or an estate, and for which each partner's share of each partnership item is the same as that partner's share of every other partnership item. Partners in the exempted partnerships are subject to regular deficiency procedures.

Reasons for Change

The more existence of a C corporation as a partner or of a special allocation does not warrant subjecting the partnership and its partners of an otherwise small partnership to the TEFRA procedures.

Explanation of Provision

The bill permits a small partnership to have a C corporation as a partner or to specially allocate items without jeopardizing its exception from the TEFRA rules. However, the provision retains the prohibition of present law against having a flow-through entity (other than an estate of a deceased partner) as a partner for purposes of qualifying for the small partnership exception.

Effective Date

The provision is effective for partnership taxable years ending after the date of enactment.

5. Exclusion of partial settlements from 1-year limitation on assessment (sec. 14315 of the bill and sec. 6229(f) of the code)

Present Law

The period for assessing tax with respect to partnership items generally is the longer of the periods provided by section 6229 or section 6501. For partnership items that convert to nonpartnership items, section 6229(f) provides that the period for assessing tax shall not expire before the date which is 1 year after the date that the items become nonpartnership items. Section 6231(b)(1)(C) provides that the partnership items of a partner for a partnership taxable year become nonpartnership items as of the date the partner enters into a settlement agreement with the IRS with respect to such items.

Reasons for Change

When a partial settlement agreement is entered into, the assessment period for the items covered by the agreement may be different than the assessment period for the remaining items. This fractured statute of limitations poses a significant tracking problem for the IRS and necessitates multiple computations of tax with respect to each partner's investment in the partnership for the taxable year.

Explanation of Provision

The bill provides that if a partner and the IRS enter into a settlement agreement with respect to some but not all of the partnership items in dispute for a partnership taxable year and other partnership items remain in dispute, the period for assessing any tax attributable to the settled items is determined as if such agreement had not been entered into. Consequently, the limitations period that is applicable to the last item to be resolved for the partnership taxable year is controlling with respect to all disputed partnership items for the partnership taxable year. The provision does not purport to create any inference as to the proper interpretation of present law.

Effective Date

The provision is effective for settlements entered into after the date of enactment.

6. Extension of time for filing a request for administrative adjustment (sec. 14316 of the bill and sec. 6227 of the code)

Present Law

If an agreement extending the statute is entered into with respect to a non-TEFRA statute of limitations, that agreement also extends the statute of limitations for filing refund claims (sec. 6511(c)). There is no comparable provision for extending the time for filing refund claims with respect to partnership items subject to the TEFRA partnership rules.

Reasons for Change

The absence of an extension for filing refund claims in TEFRA proceedings hinders taxpayers that may want to agree to extend the TEFRA statute of limitations but want to preserve their option to file a refund claim later.

Explanation of Provision

The bill provides that if a TEFRA statute extension agreement is entered into, that agreement also extends the statute of limitations for filing refund claims attributable to partnership items or affected items until 6 months after the expiration of the limitations period for assessments.

Effective Date

The provision is effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

7. Availability of innocent spouse relief in context of partnership proceedings (sec. 14317 of the bill and sec. 6230 of the code)

Present Law

In general, an innocent spouse may be relieved of liability for tax, penalties and interest if certain conditions are met (sec.

6013(e)). However, existing law does not provide the spouse of a partner in a TEFRA partnership with a judicial forum to raise the innocent spouse defense with respect to any tax or interest that relates to an investment in a TEFRA partnership.

Reasons for Change

Providing a forum in which to raise the innocent spouse defense with respect to liabilities attributable to adjustments to partnership items (including penalties, additions to tax and additional amounts) would make the innocent spouse rules more uniform.

Explanation of Provision

The bill provides both a prepayment forum and a refund forum for raising the innocent spouse defense in TEFRA cases.

With respect to a prepayment forum, the provision provides that within 60 days of the date that a notice of computational adjustment relating to partnership items is mailed to the spouse of a partner, the spouse could request that the assessment be abated. Upon receipt of such a request, the assessment is abated and any reassessment will be subject to the deficiency procedures. If an abatement is requested, the statute of limitations does not expire before the date which is 60 days after the date of the abatement. If the spouse files a petition with the Tax Court, the Tax Court only has jurisdiction to determine whether the requirements of section 6013(e) have been satisfied. In making this determination, the treatment of the partnership items that gave rise to the liability in question is conclusive.

Alternatively, the bill provides that the spouse of a partner could file a claim for refund to raise the innocent spouse defense. The claim has to be filed within 6 months from the date that the notice of computational adjustment is mailed to the spouse. If the claim is not allowed, the spouse could file a refund action. For purposes of any claim or suit under this provision, the treatment of the partnership items that gave rise to the liability in question is conclusive.

Effective Date

The provision is effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

8. Determination of penalties at partnership level (sec. 14318 of the bill and sec. 6221 of the code)

Present Law

Partnership items include only items that are required to be taken into account under the income tax subtitle. Penalties are not partnership items since they are contained in the procedure and administration subtitle. As a result, penalties may only be asserted against a partner through the application of the deficiency procedures following the completion of the partnership-level proceeding.

Reasons for Change

Many penalties are based upon the conduct of the taxpayer. With respect to partnerships, the relevant conduct often occurs at the partnership level. In addition, applying penalties at the partner level through the deficiency procedures following the conclusion of the unified proceeding at the partnership level increases the administrative burden on the IRS and can significantly increase the Tax Court's inventory.

Explanation of Provision

The bill provides that the partnership-level proceeding is to include a determination of the applicability of penalties at the partnership level. However, the provision allows partners to raise any partner-level defenses in a refund forum.

Effective Date

The provision is effective for partnership taxable years ending after the date of enactment.

9. Provisions relating to Tax Court jurisdiction (sec. 14319 of the bill and secs. 6225 and 6226 of the code)

Present Law

Improper assessment and collection activities by the IRS during the 150-day period for filing a petition or during the pendency of any Tax Court proceeding, "may be enjoined in the proper court." Present law may be unclear as to whether this includes the Tax Court.

For a partner other than the Tax Matters Partner to be eligible to file a petition for redetermination of partnership items in any court or to participate in an existing case, the period for assessing any tax attributable to the partnership items of that partner must not have expired. Since such a partner would only be treated as a party to the action if the statute of limitations with respect to them was still open, the law is unclear whether the partner would have standing to assert that the statute of limitations had expired with respect to them.

Reasons for Change

Clarifying the Tax Court's jurisdiction simplifies the resolution of tax cases.

Explanation of Provision

The bill clarifies that an action to enjoin premature assessments of deficiencies attributable to partnership items may be brought in the Tax Court. The provision also permits a partner to participate in an action or file a petition for the sole purpose of asserting that the period of limitations for assessing any tax attributable to partnership items has expired for that person. Additionally, the provision clarifies that the Tax Court has overpayment jurisdiction with respect to affected items.

Effective Date

The provision is effective for partnership taxable years ending after the date of enactment.

10. Treatment of premature petitions filed by notice partners or 5-percent groups (sec. 14320 of the bill and sec. 6226 of the code)

Present Law

The Tax Matters Partner is given the exclusive right to file a petition for a readjustment of partnership items within the 90-day period after the issuance of the notice of a final partnership administrative adjustment (FPAA). If the Tax Matters Partner does not file a petition within the 90-day period, certain other partners are permitted to file a petition within the 60-day period after the close of the 90-day period. There are ordering rules for determining which action goes forward and for dismissing other actions.

Reasons for Change

A petition that is filed within the 90-day period by a person who is not the Tax Matters Partner is dismissed. Thus, if the Tax Matters Partner does not file a petition within the 90-day period and no timely and valid petition is filed during the succeeding 60-day period, judicial review of the adjustments set forth in the notice of FPAA is foreclosed and the adjustments are deemed to be correct.

Explanation of Provision

The bill treats premature petitions filed by certain partners within the 90-day period as being filed on the last day of the following 60-day period under specified circumstances, thus affording the partnership with an opportunity for judicial review that is not available under present law.

Effective Date

The provision is effective with respect to petitions filed after the date of enactment.

11. Bonds in case of appeals from certain proceedings (sec. 14321 of the bill and sec. 7485 of the code)

Present Law

A bond must be filed to stay the collection of deficiencies pending the appeal of the Tax Court's decision in a TEFRA proceeding. The amount of the bond must be based on the court's estimate of the aggregate deficiencies of the partners.

Reasons for Change

The Tax Court cannot easily determine the aggregate changes in tax liability of all of the partners in a partnership who will be affected by the Court's decision in the proceeding. Clarifying the calculation of the bond amount would simplify the Tax Court's task.

Explanation of Provision

The bill clarifies that the amount of the bond should be based on the Tax Court's estimate of the aggregate liability of the parties to the action (and not all of the partners in the partnership). For purposes of this provision, the amount of the bond could be estimated by applying the highest individual rate to the total adjustments determined by the Tax Court and doubling that amount to take into account interest and penalties.

Effective Date

The provision is effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

12. Suspension of interest where delay in computational adjustment resulting from certain settlements (sec. 14322 of the bill and sec. 6601 of the code)

Present Law

Interest on a deficiency generally is suspended when a taxpayer executes a settlement agreement with the IRS and waives the restrictions on assessments and collections, and the IRS does not issue a notice and demand for payment of such deficiency within 30 days. Interest on a deficiency that results from an adjustment of partnership items in TEFRA proceedings, however, is not suspended.

Reasons for Change

Processing settlement agreements and assessing the tax due takes a substantial amount of time in TEFRA cases. A taxpayer is not afforded any relief from interest during this period.

Explanation of Provision

The bill suspends interest where there is a delay in making a computational adjustment relating to a TEFRA settlement.

Effective Date

The provision is effective with respect to adjustments relating to taxable years beginning after the date of enactment.

13. Special rules for administrative adjustment requests with respect to bad debts or worthless securities (sec. 14323 of the bill and sec. 6227 of the code)

Present Law

The non-TEFRA statute of limitations for filing a claim for credit or refund generally is the later of first, 3 years from the date the return in question was filed or second, 2 years from the date the claimed tax was paid, whichever is later (sec. 6511(b)). However, an extended period of time, 7 years from the date the return was due, is provided for filing a claim for refund of an overpayment resulting from a deduction for a worthless security or bad debt (sec. 6511(d)).

Under the TEFRA partnership rules, a request for administrative adjustment [RAA] must be filed within 3 years after the later of first, the date the partnership return was filed or second, the due date of the partnership return (determined without regard to extensions) (sec. 6227(a)(1)). In addition, the request must be filed before a final partnership administrative adjustment [FPAA] is mailed for the taxable year (sec. 6227(a)(2)). There is no special provision for extending the time for filing an RAA that relates to a deduction for a worthless security or an entirely worthless bad debt.

Reasons for Change

Whether and when a stock or debt becomes worthless is a question of fact that may not be determinable until after the year in which it appears the loss has occurred. An extended statute of limitations allows partners in a TEFRA partnership the same opportunity to file a delayed claim for refund in these difficult factual situations as other taxpayers are permitted.

Further, on past occasions, the IRS issued FPAAs that did not adjust the partnership's tax return. This action created wasteful paperwork, and may have, in some cases truncated the appeals rights of individual partners. A special rule is necessary to permit partners who may have been adversely impacted by this past practice of the IRS to avail themselves of the extended period irrespective of whether an FPAA has been issued.

Explanation of Provision

The bill extends the time for the filing of an RAA relating to the deduction by a partnership for a worthless security or bad debt. In these circumstances, in lieu of the 3-year period provided in sec. 6227(a)(1), the period for filing an RAA is 7 years from the date the partnership return was due with respect to which the request is made (determined without regard to extensions). The RAA is still required to be filed before the FPAA is mailed for the taxable year.

Effective Date

The provision is effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

SUBTITLE D. FOREIGN PROVISIONS

A. Modification of Passive Foreign Investment Company Provisions to Eliminate Overlap with Subpart F and to Allow Mark-To-Market Election (secs. 14401–14404 of the bill and secs. 1291–1297 of the code)

Present Law

Overview

U.S. citizens and residents and U.S. corporations (collectively, "U.S. persons") are taxed currently by the United States on their worldwide income, subject to a credit against U.S. tax on foreign income based on foreign income taxes paid with respect to such income. A foreign corporation generally is not subject to U.S. tax on its income from operations outside the United States.[112]

Income of a foreign corporation generally is taxed by the United States when it is repatriated to the United States through payment to the corporation's U.S. stockholders, subject to a foreign tax credit. However, a variety of regimes imposing current U.S. tax on income earned through a foreign corporation have been reflected in the code. Today the principal anti-deferral regimes set forth in the code are the controlled foreign corporation rules of subpart F (secs. 951–964) and the passive foreign investment company rules (secs. 1291–1297). The operation and application of these two regimes are described below. Additional anti-deferral regimes set forth in the code are the foreign personal holding company rules (secs. 551–558); the personal holding company rules (secs. 541–547); the accumulated earnings tax (secs. 531–537); and the foreign investment company and electing foreign investment company rules (secs. 1246–1247). The anti-deferral regimes included in the code overlap such that a given taxpayer may be subject to multiple sets of anti-deferral rules.

Controlled foreign corporations

In general

A controlled foreign corporation [CFC] is defined in the code generally as any foreign corporation if U.S. persons own more than 50 percent of the corporation's stock (measured by vote or value), taking into account only those U.S. persons that own at least 10 percent of the stock (measured by vote only) (sec. 957). Stock ownership includes not only stock owned directly, but also all stock owned indirectly or constructively (sec. 958).

Certain income of a CFC (sometimes referred to as "subpart F income") is subject to current U.S. tax under the code's subpart F provisions. When a CFC earns subpart F income, the United States generally taxes the corporation's 10-percent U.S. shareholders currently on their pro rata share of the subpart F income. In effect, the code treats those U.S. shareholders as having received a current distribution out of the subpart F income. The foreign tax credit may reduce the U.S. tax on such amounts.

Subpart F income typically is income that is relatively movable from one taxing jurisdiction to another and that is subject to low rates of foreign tax. Subpart F income consists of foreign base company income (as defined in sec. 954), insurance income (as defined in sec. 953), and certain income relating to international boycotts and other violations of public policy (as defined in sec. 952(a)(3)–(5)). Subpart F income does not include the foreign corporation's income that is effectively connected with the conduct of a trade or business within the United States, which income is subject to current tax in the United States (sec. 952(b)).

Foreign base company income

Foreign base company income includes five categories of income: foreign personal holding company income, foreign base company

[112] To the extent that a foreign corporation operates in the United States rather than in foreign countries, it generally pays U.S. tax like a U.S. corporation.

sales income, foreign base company services income, foreign base company shipping income, and foreign base company oil-related income (sec. 954(a)). In computing foreign base company income, amounts of income in these five categories are reduced by allowable deductions (including taxes and interest) properly allocable to such amounts of income (sec. 954(b)(5)).

One category of foreign base company income is foreign personal holding company income (sec. 954(c)). For subpart F purposes, foreign personal holding company income generally includes interest, dividends, and annuities; some rents and royalties; related party factoring income; net commodities gains; net foreign currency gains; and net gains from sales or exchanges of certain other property.

Foreign personal holding company income under subpart F does not include certain dividends and interest received from a related corporation organized and operating in the same foreign country as the recipient, and certain rents and royalties received from a related corporation for the use of property within the country in which the recipient was created or organized (sec. 954(c)(3)). However, interest, rent, and royalty payments do not qualify for the exclusion to the extent that such payments reduce subpart F income of the payor. In addition, the exclusion does not apply to any dividends with respect to stock owned by a CFC to the extent that the distributed earnings and profits were accumulated by the distributing corporation during periods when the CFC did not hold the stock.

In addition to foreign personal holding company income, foreign base company income includes foreign base company sales and services income, which consist respectively of income attributable to related party purchases and sales routed through the income recipient's country if that country is neither the origin nor the destination of the goods, and income from services performed outside the country of the corporation's incorporation for or on behalf of related persons. Foreign base company income also includes foreign base company shipping income. Finally, foreign base company income generally includes "downstream" oil-related income (i.e., foreign oil-related income other than extraction income).

Current inclusion of subpart F income

When a CFC earns subpart F income, the United States generally taxes the corporation's 10-percent U.S. shareholders currently on their pro rata share of the subpart F income (sec. 951). In the case of a corporation that is a CFC for its entire taxable year, and a U.S. shareholder that owns the same proportion of stock in the corporation throughout the corporation's taxable year, the U.S. shareholder's pro rata share of subpart F income is the amount that would have been distributed with respect to the shareholder's stock if on the last day of the corporation's taxable year the CFC had distributed all of its subpart F income pro rata to all of its shareholders.

Under a de minimis rule, none of a CFC's gross income for a taxable year is treated as foreign base company income or subpart F insurance income if the sum of the corporation's gross foreign base company income and gross subpart F insurance income for the year is less than the lesser of 5 percent of its gross income, or $1 million (sec. 954(b)(3)(A)). On the other hand, if more than 70 percent of a CFC's gross income is foreign base company income and/or subpart F insurance income, generally all of its income is treated as foreign base company income or insurance income (whichever is appropriate) (sec. 954(b)(3)(B)).

Income otherwise subject to current taxation as foreign base company income can be excluded from subpart F if the income did not in fact bear a materially lower tax than would be due on the same income earned directly by a U.S. corporation (sec. 954(b)(4)). Under this rule, subpart F income (other than foreign base company oil-related income) does not include items of income received by a CFC if the taxpayer establishes to the satisfaction of the Secretary that the income, measured under U.S. tax rules, was subject to an effective rate of foreign tax equal to at least 90 percent of the maximum U.S. corporate tax rate.

Current inclusion of other earnings

In addition to the current inclusion of subpart F income, a 10-percent U.S. shareholder generally is taxable on its pro rata share of the lesser of first, the foreign corporation's average investment in U.S. property, to the extent that such investment exceeds the foreign corporation's earnings and profits that were previously taxed on that basis, or second, the foreign corporation's current or accumulated earnings and profits to the extent that such earnings have not been previously taxed as earnings invested in U.S. property or in excess passive assets; but only to the extent that such lesser amount exceeds the amount of such earnings that have been previously taxed as subpart F income (secs. 951(a)(1)(B), 956, and 959). Similarly, pursuant to section 956A which was enacted by the Omnibus Budget Reconciliation Act of 1993, a 10-percent U.S. shareholder generally is taxable on its pro rata share of the lesser of first, the foreign corporation's average investment in excess passive assets, to the extent that such investment exceeds the foreign corporation's earnings and profits that were previously taxed on that basis, or second, the foreign corporation's current or accumulated earnings and profits [113] to the extent that such earnings have not been previously taxed as earnings invested in U.S. property or in excess passive assets; but only to the extent that such lesser amount exceeds the amount of such earnings that have been previously taxed as subpart F income (secs. 951(a)(1)(C), 956A, and 959). The amounts of such investments are measured at the close of each calendar quarter of the taxable year.

Distributions of previously taxed income

Earnings and profits of a CFC that are (or previously have been) included in the incomes of the U.S. shareholders are not taxed again when such earnings are actually distributed to the U.S. shareholders (sec. 959(a)(1)). Similarly, such previously taxed income is not included in the incomes of the U.S. shareholders in the event that such earnings are invested in U.S. property (sec. 959(a)(2)) or in excess passive assets (sec. 959(a)(3)). Previously

[113] Accumulated earnings and profits are taken into account for this purpose only to the extent that they were accumulated in taxable years begining after September 30, 1993.

taxed income actually distributed from a lower-tier CFC to a higher tier CFC is disregarded in determining the subpart F income of the higher tier CFC that is included in the income of the U.S. shareholders. In the event that stock in the CFC is transferred subsequent to the income inclusion but prior to the actual distribution of previously taxed income, the transferee shareholder is similarly exempt from tax on the distribution to the extent of the proven identity of shareholder interest.

Distributions by a CFC are allocated first to previously taxed income, then to other earnings and profits (sec. 959(c)). Therefore, a CFC may distribute its previously taxed income to its shareholders, resulting in no additional U.S. income taxation, before it makes any taxable dividend distributions of any current or accumulated non-subpart F earnings and profits. However, distributions for any taxable year are taken into account before income inclusions are determined for that year on account of earnings invested in U.S. property or excess passive assets. Such income inclusions, therefore, generate previously taxed income that can be distributed without further U.S. income taxation beginning in the following taxable year.

Passive foreign investment companies

The Tax Reform Act of 1986 established an anti-deferral regime for passive foreign investment companies (PFIC's) and established separate rules for each of two types of PFIC's. One set of rules applies to PFIC's that are "qualified electing funds," under which electing U.S. shareholders include currently in gross income their respective shares of a PFIC's total earnings, with a separate election to defer payment of tax, subject to an interest charge, on income not currently received. The second set of rules applies to PFIC's that are not qualified electing funds ("nonqualified funds"), under which the U.S. shareholders pay tax on income realized from a PFIC and an interest charge that is attributable to the value of deferral.

Definition of passive foreign investment company

A PFIC is any foreign corporation if first, 75 percent or more of its gross income for the taxable year consists of passive income, or second, 50 percent or more of the average fair market value of its assets consists of assets that produce, or are held for the production of, passive income (sec. 1296(a)). In the case of a CFC, as well as any other corporation that so elects, the asset test is applied using the adjusted bases of the corporation's assets rather than their fair market value (sec. 1296(a)(2)). Passive income for these purposes generally means income that satisfies the definition of foreign personal holding company income under subpart F (as discussed above); except as provided in regulations, however, passive income does not include certain active-business banking, insurance, or (in the case of the U.S. shareholders of a CFC) securities income, or certain amounts received from a related party (to the extent that the amounts are allocable to income of the related party which is not passive income) (sec. 1296(b)). Passive assets for this purpose are generally those assets that produce or are held for the production of passive income.

Special rules apply for the purpose of measuring the assets of the foreign corporation in the case of certain leased property. The code treats certain leased property as assets held by the foreign corporation for purposes of the PFIC asset test. This rule applies to tangible personal property with respect to which the foreign corporation is the lessee under a lease with a term of at least 12 months. The measure of leased property for purposes of applying the asset test is the unamortized portion of the present value of the payments under the lease. Property leased by a corporation is not taken into account in testing for PFIC status under the asset test either if the lessor is a related person or if a principal purpose of leasing the property was to avoid the PFIC provisions.

In addition, in measuring the assets of a CFC for purposes of the PFIC asset test, adjusted basis is modified to take into account certain research and experimental expenditures and certain payments for the use of intangible property that is licensed to the CFC. First, the aggregate adjusted basis of the total assets of the CFC is increased by the total amount of research and development expenditures made by the CFC, for qualified research or experimental expenditures (as defined in section 174), taking into account payments and expenditures (including cost-sharing payments) made in the current taxable year and the 2 most recent preceding taxable years. In addition, the aggregate adjusted basis of the total assets of the CFC is increased by the amount of three times the total payments made during the taxable year to unrelated persons and related U.S. persons for the use of intangible property (as defined in section 936(h)(3)(B)) with respect to which the CFC is a licensee, and which the CFC uses in the active conduct of its trade or business. Payments made to related foreign persons are not taken into account.

In determining whether foreign corporations that own subsidiaries are PFIC's, look-through treatment is provided in certain cases (sec. 1296(c)). Under this look-through rule, a foreign corporation that owns, directly or indirectly, at least 25 percent of the value of the stock of another corporation is treated as owning a proportionate part of the other corporation's assets and income. Thus, amounts such as interest and dividends received from foreign or domestic subsidiaries are eliminated from the shareholder's income in applying the income test, and the stock or debt investment is eliminated from the shareholder's assets in applying the asset test.

In addition, interest, dividends, rents, and royalties received from related persons that are not subject to look-through treatment are excepted from treatment as passive income to the extent that, under regulations prescribed by the Secretary, those amounts are allocable to income of the payor that is not passive income (sec. 1296(b)(2)(C)).

In measuring the assets of a foreign corporation, stock of certain U.S. corporations owned by another U.S. corporation which is at least 25-percent owned by the foreign corporation generally is treated as a nonpassive asset (sec. 1297(b)(8)). Under this rule, in determining whether a foreign corporation is a PFIC, stock of a regular domestic C corporation owned by a 25-percent-owned domestic corporation is treated as an asset which does not produce passive income (and is not held for the production of passive income), and income derived from that stock is treated as income which is not passive income.

Special exceptions from PFIC classification apply to start-up companies (sec. 1297(b)(2)) and corporations changing businesses during the taxable year (sec. 1297(b)(3)). In both such cases, a corporation may have a substantially higher proportion of passive assets (and passive income, in some cases) than at other times in its history.

General rule—nonqualified funds

A U.S. person who is a shareholder in a PFIC that is not a "qualified electing fund" (or has not been a qualified electing fund for all PFIC years in the holding period of the taxpayer) pays U.S. tax and an interest charge based on the value of tax deferral at the time the shareholder disposes of stock in the PFIC or upon receipt of an "excess" distribution (sec. 1291). Under this rule, gain recognized on disposition of stock in a nonqualified fund or income on receipt of an "excess" distribution from a nonqualified fund is treated as ordinary income and is treated as earned pro rata over the shareholder's holding period of his or her investment. The portion treated as earned before the current year during the post-1986 period during which the foreign corporation was a PFIC is taxed at the highest applicable tax rate in effect for each respective year, and is subject to an interest charge. The interest charge is treated as interest for tax purposes. The total of such tax and interest is referred to as the "deferred tax amount." Distributions from nonqualified funds are eligible for direct and deemed-paid foreign tax credits (under secs. 901 and 902) computed under special rules.

An "excess" distribution is any current year distribution in respect of a share of stock that exceeds 125 percent of the average amount of distributions in respect of the share of stock received during the 3 preceding years (or, if shorter, the total number of years of the taxpayer's holding period prior to the current taxable year) (sec. 1291(b)). The determination of an excess distribution excludes from the 3-year average distribution base that part of a prior-year excess distribution that is considered attributable to deferred earnings (i.e., that part of the excess distribution that was not allocable to pre-1986 or pre-PFIC years or to the current year). Any gain from the sale or disposition of such stock is also treated as an excess distribution. A distribution for this purpose includes any income inclusion on account of earnings of a CFC invested in U.S. property or excess passive assets.

Qualified electing funds

A U.S. person who owns (directly or indirectly under the attribution rules) stock in a PFIC may elect that the PFIC be treated as a "qualified electing fund" with respect to that shareholder (sec. 1295), with the result that the shareholder must include currently in gross income his or her pro rata share of the PFIC's total earnings and profits (sec. 1293). The amount currently included in the income of an electing shareholder is divided between a shareholder's pro rata share of the ordinary income of the PFIC and net capital gain income of the PFIC. This inclusion rule generally requires current payment of tax, absent a separate election to defer such payment. Foreign tax credits are generally allowed against U.S. tax on amounts included in income with respect to a qualified electing fund.

The election for treatment as a qualified electing fund, which is made at the shareholder level, is available only where the PFIC complies with the requirements prescribed in Treasury regulations to determine the income of the PFIC and to ascertain any other information necessary to carry out the purposes of the PFIC provisions. The effect of the election is to treat a PFIC as a qualified electing fund with respect to each electing investor so that, for example, an electing investor will not be subject to the deferred tax and interest charge rules of section 1291 on receipt of a distribution if the election has been in effect for each of the PFIC's taxable years for which the company was a PFIC and which includes any portion of the investor's holding period.

A U.S. shareholder's pro rata share of income generally is determined by aggregating a PFIC's income for the taxable year and attributing that income ratably over every day in the PFIC's year. Electing investors then include in income for the period in which they hold stock in the PFIC their daily ownership interest in the PFIC multiplied by the amount of income attributed to each day.

The distribution of earnings and profits that were previously included in the income of an electing shareholder under these rules is not treated as a dividend to the shareholder, but does reduce the PFIC's earnings and profits (sec. 1293(c)). The basis of an electing shareholder's stock in a PFIC is increased by amounts currently included in income under these rules, and is decreased by any amount that is actually distributed but treated as previously taxed under section 1293(c) (sec. 1293(d)).

U.S. investors in qualified electing funds may generally, subject to the payment of interest, elect to defer payment of U.S. tax on amounts included currently in income but for which no current distribution has been received (sec. 1294). An election to defer tax is treated as an extension of time to pay tax for which a U.S. shareholder is liable for interest. The disposition of stock in a PFIC generally terminates all previous extensions of time to pay tax with respect to the earnings attributable to that stock.

Coordination of rules regarding nonqualified funds and qualified electing funds

Gain recognized on disposition of stock in a PFIC by a U.S. investor and distributions received by the U.S. investor from the PFIC are not taxed under the rules applicable to nonqualified funds (i.e., sec. 1291) if the PFIC is a qualified electing fund for each of the corporation's taxable years which begin after December 31, 1986 and which includes any portion of the investor's holding period (sec. 1291(d)(1)). Therefore, if for any taxable year beginning after December 31, 1986, a foreign corporation is a PFIC but is not a qualified electing fund with respect to the U.S. investor, gains and distributions in any subsequent year will be subject to the rules applicable to nonqualified funds.

Any U.S. person who owns stock (directly or indirectly under the attribution rules) in a PFIC which previously was not a qualified electing fund for a taxable year but which becomes one for the subsequent taxable year may elect to be taxed on the unrealized appreciation inherent in his or her PFIC stock up through the first day of the subsequent taxable year, pay all prior deferred tax and interest, and acquire a new basis and holding period in his or her PFIC investment (sec. 1291(d)(2)). Thereafter, the shareholder is subject to the rules applicable to qualified electing funds.

An alternative election is available to shareholders in a PFIC that is a CFC. Under this alternative, instead of recognizing the entire gain in the value of his or her stock, a U.S. person that holds stock (directly or indirectly under the attribution rules) in a PFIC that is a CFC and that becomes a qualified electing fund can elect to include in gross income as a dividend his or her share of the corporation's earnings and profits accumulated after 1986 and since the corporation was a PFIC. Upon this election, the U.S. person's stock basis is increased by the amount included in income and the shareholder is treated as having a new holding period in his or her stock. Thereafter, the shareholder is subject to the rules applicable to qualified electing funds. The total amount treated as a dividend under the above election is an excess distribution and is to be assigned, for purposes of computing the deferred tax and interest charge, to the shareholder's stock interest on the basis of post-December 31, 1986 ownership.

Overlap between subpart F and the PFIC provisions

A foreign corporation that is a CFC is also a PFIC if it meets the passive income test or the passive asset test described above. In such a case, the 10-percent U.S. shareholders are subject both to the subpart F provisions (which require current inclusion of certain earnings of the corporation) and to the PFIC provisions (which impose an interest charge on amounts distributed from the corporation and gains recognized upon the disposition of the corporation's stock, unless an election is made to include currently all of the corporation's earnings).

If an item of income of a foreign corporation would be includable in the gross income of a U.S. shareholder both under the CFC rules and under the rules relating to the current taxation of income from passive foreign investment companies that are qualified electing funds, that item of income is included only under the CFC rules (sec. 951(f)). Special relief rules apply in the case of a second- (or lower-) tier PFIC that is a qualified electing fund and that is also a CFC.

In the case of a PFIC that is not a qualified electing fund, adjustments to excess distributions are provided for amounts that are taxed currently under the subpart F rules. Thus, excess distributions from a PFIC do not include any amounts that are treated as previously taxed income when distributed by a CFC which is also a PFIC that is not a qualified electing fund.

Reasons for Change

The anti-deferral rules for U.S. persons owning stock in foreign corporations are very complex. Moreover, the interactions between the anti-deferral regimes cause additional complexity. The overlap between the subpart F rules and the PFIC provisions is of particular concern to the committee. The PFIC provisions, which do not require a threshold level of ownership by U.S. persons, apply where the U.S.-ownership requirements of subpart F are not satisfied. However, the PFIC provisions also apply to a U.S. shareholder that is subject to the current inclusion rules of subpart F with respect to the same corporation. The committee believes that the additional complexity caused by this overlap is unnecessary.

The committee also understands that the interest-charge method for income inclusion provided in the PFIC rules is a substantial source of complexity for shareholders of PFICs. Even without eliminating the interest-charge method, significant simplification can be achieved by providing an alternative income inclusion method for shareholders of PFICs. Further, some taxpayers have argued that they would have preferred choosing the current-inclusion method afforded by the qualified fund election, but were unable to do so because they could not obtain the necessary information from the PFIC. Accordingly, the committee believes that a mark-to-market election would provide PFIC shareholders with a fair alternative method for including income with respect to the PFIC.

Explanation of Provision

Elimination of overlap between subpart F and the PFIC provisions

In the case of a PFIC that is also a CFC, the bill generally treats the corporation as not a PFIC with respect to certain 10-percent shareholders. This rule applies if the corporation is a CFC (within the meaning of section 957(a)) and the shareholder is a U.S. shareholder (within the meaning of section 951(b)) of such corporation (i.e., if the shareholder is subject to the current inclusion rules of subpart F with respect to such corporation). Moreover, the rule applies for that portion of the shareholder's holding period with respect to the corporation's stock which is after December 31, 1995 and during which the corporation is a CFC and the shareholder is a U.S. shareholder. Accordingly, a shareholder that is subject to current inclusion under the subpart F rules with respect to stock of a PFIC that is also a CFC generally is not also subject to the PFIC provisions with respect to the same stock. As under present law, the PFIC provisions continue to apply in the case of a PFIC that is also a CFC to shareholders that are not subject to subpart F (i.e., to shareholders that are U.S. persons and that own (directly, indirectly, or constructively) less than 10 percent of the corporation's stock by vote).

If a shareholder of a PFIC is subject to the rules applicable to nonqualified funds before becoming eligible for the special rules provided under the bill for shareholders that are subject to subpart F, the stock held by such shareholder continues to be treated as PFIC stock unless the shareholder makes an election to pay tax and an interest charge with respect to the unrealized appreciation in the stock or the accumulated earnings of the corporation. This rule, which applies under current law to PFICs that had been nonqualified funds and that cease to satisfy the tests for PFIC status, prevents the shareholder from avoiding the interest charge imposed by the PFIC rules with respect to amounts accumulated by the PFIC while the shareholder held stock of the corporation but before the shareholder was subject to subpart F.

If a shareholder is not subject to the PFIC provisions because the shareholder is subject to subpart F and the shareholder subsequently ceases to be subject to subpart F with respect to the corporation, for purposes of the PFIC provisions, the shareholder's holding period for such stock is treated as beginning immediately after such cessation. Accordingly, in applying the rules applicable to PFICs that are not qualified electing funds, the earnings of the corporation are not attributed to the period during which the shareholder was subject to subpart F with respect to the corporation and was not subject to the PFIC provisions.

Mark-to-market election

The bill allows a shareholder of a PFIC to make a mark-to-market election with respect to the stock of the PFIC, provided that such stock is marketable (as defined below). Under such an election, the shareholder includes in income each year an amount equal to the excess, if any, of the fair market value of the PFIC stock as of the close of the taxable year over the shareholder's adjusted basis in such stock. The shareholder is allowed a deduction for the excess, if any, of the adjusted basis of the PFIC stock over its fair market value as of the close of the taxable year. However, deductions are allowable under this rule only to the extent of the excess, if any, of the total amount of mark-to-market gains with respect to the stock included by the shareholder for prior taxable years over the amount of mark-to-market losses with respect to such stock that were allowed as deductions for prior taxable years.

The election provided in the bill is available only for PFIC stock that is "marketable." For this purpose, PFIC stock is considered marketable if it is regularly traded on a national securities exchange that is registered with the Securities and Exchange Commission or on the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934. In addition, PFIC stock is considered marketable if it is regularly traded on any exchange or market that the Secretary of the Treasury determines has rules sufficient to ensure that the market price represents a legitimate and sound fair market value. In identifying foreign exchanges that qualify for these purposes, the committee intends that the Secretary not be required to include exchanges that satisfy standards established under Federal securities law and regulations. Any option on stock that is considered marketable under the foregoing rules is treated as marketable, to the extent provided in regulations. The committee intends that the Secretary may adopt a definition of the term "regularly traded" that differs from definitions provided for other purposes under the code. Further, the committee intends that the Secretary not be bound by definitions applied for purposes of enforcing other laws, including securities laws. PFIC stock also is treated as marketable, to the extent provided in regulations, if the PFIC offers for sale (or has outstanding) stock of which it is the issuer and which is redeemable at its net asset value in a manner comparable to a U.S. regulated investment company [RIC].

In addition, the bill treats as marketable any PFIC stock owned by a RIC that offers for sale (or has outstanding) any stock of which it is the issuer and which is redeemable at its net asset value. The committee believes that the RIC's determination of PFIC stock value for this nontax purpose would ensure a sufficiently accurate determination of the fair market value of the PFIC stock owned by the RIC. The bill also treats as marketable any PFIC stock held by any other RIC that otherwise publishes net asset valuations at least annually, except to the extent provided in regulations. The committee believes that even for RIC's that do not make a market in their own stock, but that do regularly report their net asset values in compliance with the securities laws, inaccurate valuation may bring exposure to legal liabilities, and this exposure may ensure the reliability of the values such RIC's assign to the PFIC stock they hold. However, the committee intends that Treasury regulations will disallow marketable treatment for nonmarketable PFIC stock held by a RIC that is not required to perform such net asset valuation at the close of each taxable year, that does not publish such valuation, or that otherwise does not provide what the Secretary regards as sufficient indicia of the reliability of its valuations.

The shareholder's adjusted basis in the PFIC stock is adjusted to reflect the amounts included or deducted under this election. In the case of stock owned indirectly by a U.S. person through a foreign entity (as discussed below), the basis adjustments for mark-to-market gains and losses apply to the basis of the PFIC in the hands of the intermediary owner, but only for purposes of the subsequent application of the PFIC rules to the tax treatment of the indirect U.S. owner. In addition, similar basis adjustments are made to the adjusted basis of the property actually held by the U.S. person by reason of which the U.S. person is treated as owning PFIC stock.

Amounts included in income pursuant to a mark-to-market election, as well as gain on the actual sale or other disposition of the PFIC stock, are treated as ordinary income.[114] Ordinary loss treatment also applies to the deductible portion of any mark-to-market loss on PFIC stock, as well as to any loss realized on the actual sale or other disposition of PFIC stock to the extent that the amount of such loss does not exceed the net mark-to-market gains previously included with respect to such stock. The source of amounts with respect to a mark-to-market election generally is determined in the same manner as if such amounts were gain or loss from the sale of stock in the PFIC.

An election to mark to market applies to the taxable year for which made and all subsequent taxable years, unless the PFIC stock ceases to be marketable or the Secretary of the Treasury consents to the revocation of such election.

Under constructive ownership rules, U.S. persons that own PFIC stock through certain foreign entities may make this election with respect to the PFIC. These constructive ownership rules apply to treat PFIC stock owned directly or indirectly by or for a foreign

[114] For purposes of the rules under section 851(b) regarding eligibility as a RIC, income includible pursuant to the election is treated as a dividend.

partnership, trust, or estate as owned proportionately by the partners or beneficiaries, except as provided in regulations.[115] Stock in a PFIC that is thus treated as owned by a person is treated as actually owned by that person for purposes of again applying the constructive ownership rules. In the case of a U.S. person that is treated as owning PFIC stock by application of this constructive ownership rule, any disposition by the U.S. person or by any other person that results in the U.S. person being treated as no longer owning the PFIC stock, as well as any disposition by the person actually owning the PFIC stock, is treated as a disposition by the U.S. person of the PFIC stock.

In addition, a CFC that owns stock in a PFIC is treated as a U.S. person that may make the election with respect to such PFIC stock. Any amount includible (or deductible) in the CFC's gross income pursuant to this mark-to-market election is treated as foreign personal holding company income (or a deduction allocable to foreign personal holding company income). The source of such amounts, however, is determined by reference to the actual residence of the CFC.

In the case of a taxpayer that makes the mark-to-market election with respect to stock in a PFIC that is a nonqualified fund after the beginning of the taxpayer's holding period with respect to such stock, a coordination rule applies to ensure that the taxpayer does not avoid the interest charge with respect to amounts attributable to periods before such election. A similar rule applies to RIC's that make the mark-to-market election under this bill after the beginning of their holding period with respect to PFIC stock (to the extent that the regulated investment company had not previously marked to market the stock of the PFIC).

Except as provided in the coordination rules described above, the rules of section 1291 (with respect to nonqualified funds) do not apply to a shareholder of a PFIC if a mark-to-market election is in effect for the shareholder's taxable year. Moreover, in applying section 1291 in a case where a mark-to-market election was in effect for any prior taxable year, the shareholder's holding period for the PFIC stock is treated as beginning immediately after the last taxable year for which such election applied.

A special rule applicable in the case of a PFIC shareholder that becomes a U.S. person treats the adjusted basis of any PFIC stock held by such person on the first day of the year in which such shareholder becomes a U.S. person as equal to the greater of its fair market value on such date or its adjusted basis on such date. Such rule applies only for purposes of the mark-to-market election. This rule ensures that the appreciation in the stock's value prior to the time that the shareholder becomes subject to the U.S. tax jurisdiction is not subject to U.S. tax under the mark-to-market election.

Clarifications of definition of passive income

The bill clarifies the definition of passive income for purposes of the PFIC provisions in two respects. First, the bill clarifies that the

[115] For this purpose, it is intended that proportionate ownership will be determined by taking into account any special or discretionary allocations of the distributions or gains with respect to the PFIC stock.

same-country exceptions from the definition of foreign personal holding company income in section 954(c) do not apply in determining passive income for purposes of the PFIC definition.[116] Second, the bill clarifies that foreign trade income of a foreign sales corporation does not constitute passive income for purposes of the PFIC definition.

Effective Date

The provisions are effective for taxable years of U.S. persons beginning after December 31, 1995, and taxable years of foreign corporations ending with or within such taxable years of U.S. persons.

B. Treatment of Controlled Foreign Corporations

1. General provisions affecting treatment of controlled foreign corporations (secs. 14411–14413 of the bill and secs. 902, 904, 951, 952, 959, 960, 961, 964, and 1248 of the code)

Present Law

Treatment of controlled foreign corporation earnings

In general

A U.S. shareholder generally treats dividends from a controlled foreign corporation (CFC) as ordinary income from foreign sources that carries both direct and indirect foreign tax credits. Under look-through rules, the income and credits are subject to those foreign tax credit separate limitations which are consistent with the character of the income of the foreign corporation.

Several code provisions result in similar tax treatment of a U.S. shareholder if it either disposes of the CFC stock, or the CFC realizes certain types of income (including income with respect to lower-tier CFC's). First, under section 1248, gain resulting from the disposition by a U.S. person of stock in a foreign corporation that was a CFC with respect to which the U.S. person was a U.S. shareholder in the previous 5 years is treated as a dividend to the extent of allocable earnings.

Second, a CFC has subpart F income when it realizes gain on disposition of stock and, ordinarily, when it receives a dividend. Under sections 951 and 960, such subpart F income may result in taxation to the U.S. shareholder similar to that on a dividend from the CFC. In addition to provisions for characterizing income and credits in these situations, the code also provides certain rules that adjust basis, or otherwise result in modifying the tax consequences of subsequent income, to account for these and other subpart F income inclusions.

Third, when in exchange for property any corporation (including a CFC) acquires stock in another corporation (including a CFC) controlled by the same persons that control the acquiring corporation, earnings of the acquiring corporation (and possibly the acquired corporation) may be treated under section 304 as having been distributed as a dividend to the seller.

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[116] H. Rept. No. 100–795, 100th Cong., 2d Sess. 272 (1988); S. Rept. No. 100–445, 100th Cong., 2d Sess. 285 (1988).

For foreign tax credit separate limitation purposes, a CFC is not treated as a noncontrolled section 902 corporation with respect to any distribution out of its earnings and profits for periods during which it was a CFC and except as provided in regulations, the recipient of the distribution was a U.S. shareholder in such corporation.[117] The consequence of not being treated as a noncontrolled section 902 corporation is application of the so-called look-through rule. That is, dividends paid by such CFC to its U.S. shareholder are characterized for separate limitation purposes by reference to the character of the underlying earnings of the CFC.

Lower-tier controlled foreign corporations

For purposes of applying the separate foreign tax credit limitations, receipt of a dividend from a lower-tier CFC by an upper-tier CFC may result in a subpart F income inclusion for the U.S. shareholder that is treated as income in the same foreign tax credit limitation category as the income of the lower-tier CFC. The income inclusion of the U.S. shareholder may carry deemed-paid credits for foreign taxes paid by the lower-tier CFC, and the basis of the U.S. shareholder in the stock of the first-tier CFC is increased by the amount of the inclusion. If, on the other hand, the upper-tier CFC sells stock of a lower-tier CFC, then the gain generally also is included in the income of the U.S. shareholder as subpart F income and the U.S. shareholder's basis in the stock of the first-tier CFC is increased to account for the inclusion, but the inclusion is not treated for foreign tax credit limitation purposes by reference to the nature of the income of the lower-tier CFC. Instead it generally is treated as passive income.

If subpart F income of a lower-tier CFC is included in the gross income of a U.S. shareholder, no provision of present law allows adjustment of the basis of the upper-tier CFC's stock in the lower-tier CFC.

Subpart F inclusions in year of acquisition

The subpart F income earned by a foreign corporation during its taxable year is taxed to the persons who are U.S. shareholders of the corporation on the last day, in that year, on which the corporation is a CFC. In the case of a U.S. shareholder who acquired stock in a CFC during the year, such inclusions are reduced by all or a portion of the amount of dividends paid in that year by the foreign corporation to any person other than the acquirer with respect to that stock. The reduction is the lesser of the amount of dividends with respect to such stock received by other persons during the year or the amount determined by multiplying the subpart F income for the year by the proportion of the year during which the acquiring shareholder did not own the stock.

[117] Under proposed regulations, if a CFC distributes a dividend to an upper-tier CFC or to a U.S. shareholder that owns indirectly more than 90 percent of the total combined voting power of the CFC at the time of the distribution, and the dividend is attributable to earnings and profits accumulated during a period in which the distributing corporation was a CFC but the 90 percent or more U.S. shareholder was not a U.S. shareholder of the corporation, the dividend generally would be treated as a dividend from a noncontrolled section 902 corporation. (Prop. Treas. Reg. sec. 1.904–4(g)(3)(ii)).

Distributions of previously taxed income

If in a year after the year of income inclusion under the subpart F provisions of the code, a U.S. shareholder in the CFC receives a distribution from the corporation, the distribution may be deemed to come first out of the corporation's previously taxed income and, therefore, may be excluded from the U.S. shareholder's income. However, a distribution by a foreign corporation to a domestic corporation of earnings and profits previously taxed under subpart F is treated as an actual dividend, solely for purposes of determining the indirect foreign tax credit available to the domestic corporation (sec. 960(a)(3)).

Treatment of U.S. source income earned by a controlled foreign corporation

As a general rule, subpart F income does not include income earned from sources within the United States if the income is effectively connected with the conduct of a U.S. trade or business by the CFC. This general rule does not apply, however, if the income is exempt from, or subject to a reduced rate of, U.S. tax pursuant to a provision of a U.S. treaty.

Indirect foreign tax credits

A U.S. corporation that owns at least 10 percent of the voting stock of a foreign corporation is treated as if it had paid a share of the foreign income taxes paid by the foreign corporation in the year in which the foreign corporation's earnings and profits become subject to U.S. tax as dividend income of the U.S. shareholder (sec. 902(a)). A U.S. corporation also may be deemed to have paid taxes paid by a second- or third-tier foreign corporation. That is, where a first-tier foreign corporation pays a dividend to a 10-percent-or-more U.S. corporate shareholder, then for purposes of deeming the U.S. corporation to have paid foreign tax, the first-tier foreign corporation may be deemed to have paid a share of the foreign taxes paid by a second-tier foreign corporation of which the first-tier foreign corporation owns at least 10 percent of the voting stock, and from which the first-tier foreign corporation received dividends. The same principle applies to dividends from a second-tier or third-tier foreign corporation. No taxes paid by a second- or third-tier foreign corporation are deemed paid by the first- or second-tier foreign corporation, respectively, unless the product of the percentage ownership of voting stock at each level from the U.S. corporation down equals at least 5 percent (sec. 902(b)). Under present law, foreign taxes paid below the third tier of foreign corporations are not eligible for the indirect foreign tax credit.

An indirect foreign tax credit generally is also available to a U.S. corporate shareholder meeting the requisite ownership threshold with respect to inclusions of subpart F income from CFC's (sec. 960(a)).[118] Moreover, an indirect foreign tax credit may also be available to U.S. corporate shareholders with respect to inclusions of income from passive foreign investment companies.

[118] Unlike the indirect foreign tax credit for actual dividend distributions, the indirect credit for subpart F income inclusions can be available to individual shareholders in certain circumstances if an election is made (sec. 962).

Reasons for Change

The committee believes that complexities are caused by uncertainties and gaps in the present statutory schemes for taxing gains on dispositions of stock in CFC's as dividend income or subpart F income. These uncertainties and gaps may prompt taxpayers to refrain from behavior that would otherwise be the result of rational business decisions, for fear of excessive tax—for example, double corporate-level taxation of income. In many cases, concerns about excessive taxation can be allayed, but only at the cost of avoiding the simpler and more rational economic behavior in favor of tax-motivated planning.

The committee understands that, as a general matter, other aspects of the tax system may interfere with rational economic decision making by prompting taxpayers to engage in tax-motivated planning in order to eliminate taxation in cases where income is in fact earned. Some such characteristics of the tax system have in the past been altered by Congress in order to reduce excessive interference by the tax system in labor, investment, and consumption decisions of taxpayers.[119] The committee believes that in the context of tax simplification, it generally is appropriate to reduce complexities caused by aspects of the rules governing CFC's that provide for nonuniform tax results from dividends, on the one hand, and stock disposition proceeds to the extent that earnings and profits underlie those proceeds, on the other.

In light of the bill's provisions extending section 1248 treatment to dispositions of stock in lower-tier companies, the committee believes it is appropriate to repeal the limitation on look-through treatment (for foreign tax credit separate limitation purposes) of dividends from CFC's to U.S. shareholders out of earnings from periods in which the payor was a CFC but the dividend recipient was not a U.S. shareholder of that corporation. By extending section 1248 treatment to dispositions of stock in lower-tier CFC's, the committee believes that earnings and profits (and related foreign tax credits) of such lower-tier companies cannot readily be transferred from the control of one U.S. taxpayer to another. Moreover, the committee believes that repeal of this limitation on look-through treatment will avoid significant complexity that would otherwise be engendered by practical application of the limitation.

The committee also understands that certain arbitrary limitations placed on the operation of the indirect foreign tax credit may have resulted in taxpayers undergoing burdensome and sometimes costly corporate restructuring. In other cases, there is concern that these limitations may have contributed to decisions by U.S. companies against acquiring foreign subsidiaries. The committee deems it appropriate to ease certain of these restrictions in cases where the administration of the foreign tax credit rules by taxpayers and the IRS will not be significantly impaired.

[119] See, e.g., Staff of the Joint Committee on Taxation, 100th Cong., 1st Sess. "General Explanation of the Tax Reform Act of 1986," at 6 et seq. (1987).

Explanation of Provisions

In general

The bill makes a number of modifications in the treatment of income derived from the disposition of stock in a CFC. The bill provides deemed dividend treatment for gains on dispositions of lower-tier CFC's. Where earnings of the lower-tier CFC have been previously taxed under the subpart F provisions of the code, the bill permits the amount of gain taxed to the U.S. shareholder to be adjusted for previous income inclusions. Where proceeds from the sale of stock to a CFC that has earnings previously taxed under subpart F would be treated as a dividend under the principles of section 304, the bill expressly permits exclusion of the deemed section 304 dividend from taxation to the extent of the previously taxed earnings and profits of the CFC from which the property was deemed to have been distributed. (Appropriate basis adjustments also are permitted to be made.) Where a CFC (whether or not it is a lower-tier CFC) earns subpart F income in a year in which a U.S. shareholder sells its stock, in a transaction that does not result in the foreign corporation ceasing to be a CFC, the bill contains statutory language providing for a proportional reduction in the taxation of the subpart F income in that year to the acquiring U.S. shareholder.

The bill contains three additional provisions related to CFC's. First, the bill repeals the limitation on look-through treatment (for foreign tax credit separate limitation purposes) of dividends from CFC's to U.S. shareholders out of earnings from periods in which the payor was a CFC, but the dividend recipient was not a U.S. shareholder of the CFC. Second, the bill clarifies the effect of a treaty exemption or reduction of the branch profits tax on the determination of subpart F income. Third, the bill extends application of the indirect foreign tax credit to fourth-, fifth-, and sixth-tier CFC's where the necessary ownership thresholds (as extended under the bill to these tiers) are satisfied.

Lower-tier controlled foreign corporations

Characterization of gain on stock disposition

The bill provides that if a CFC is treated as having gain from the sale or exchange of stock in a foreign corporation, the gain is treated as a dividend to the same extent that it would have been so treated under section 1248 if the CFC were a U.S. person. This provision, however, does not affect the determination of whether the corporation whose stock is sold or exchanged is a CFC.

Thus, for example, if a U.S. corporation owns 100 percent of the stock a foreign corporation, which owns 100 percent of the stock of a second foreign corporation, then under the bill, any gain of the first corporation upon a sale or exchange of stock of the second corporation is treated as a dividend for purposes of subpart F income inclusions to the U.S. shareholder, to the extent of earnings and profits of the second corporation attributable to periods in which the first foreign corporation owned the stock of the second foreign corporation while the latter was a CFC with respect to the U.S. shareholder.

As another example, assume that the U.S. corporation has always owned 40 percent of the voting stock and 60 percent of the value of all of the stock of a foreign corporation, which has always owned 40 percent of the voting stock and 60 percent of the value of all of the stock of a second foreign corporation. All the other stock of the foreign corporations has always been owned by foreign individuals unrelated to the U.S. corporation. In this case, the second foreign corporation has never been a CFC. Therefore, none of the gain of the first corporation upon a sale of stock of the second corporation is treated as a dividend.

Gain on disposition of stock in a related corporation created or organized under the laws of, and having a substantial part of its assets in a trade or business in, the same foreign country as the gain recipient, even if recharacterized as a dividend under the bill, is not excluded from foreign personal holding company income under the same-country exception that applies to actual dividends.

The bill provides that for purposes of this provision, a CFC is treated as having sold or exchanged stock if, under any provision of subtitle A of the code, the CFC is treated as having gain from the sale or exchange of such stock. Thus, for example, if a CFC distributes to its shareholder stock in a foreign corporation, and the distribution results in gain being recognized by the CFC under code section 311(b) as if the stock were sold to the shareholder for fair market value, the bill makes clear that for purposes of this provision, the CFC is treated as having sold or exchanged the stock.

The bill also repeals a provision added to the code by the Technical and Miscellaneous Revenue Act of 1988 [120] (the "1988 Act") that, except as provided by regulations, requires a recipient of a distribution from a CFC to have been a U.S. shareholder of that CFC for the period during which the earnings and profits which gave rise to the distribution were generated in order to avoid treating the distribution as one coming from a noncontrolled section 902 corporation. Thus, under the bill, a CFC is not treated as a noncontrolled section 902 corporation with respect to any distribution out of its earnings and profits for periods during which it was a CFC, whether or not the recipient of the distribution was a U.S. shareholder of the corporation when the earnings and profits giving rise to the distribution were generated.

Adjustments to basis of stock

The bill also provides that when a lower-tier CFC earns subpart F income, and stock in that corporation is later disposed of by an upper-tier CFC, the resulting income inclusion of the U.S. shareholders are, under regulations, adjusted to account for previous inclusions, in a manner similar to the adjustments currently provided to the basis of stock in a first-tier CFC. Thus, just as the basis of a U.S. shareholder in a first-tier CFC rises when subpart F income is earned and falls when previously taxed income is distributed, so as to avoid double taxation of the income on a later disposition of the stock of that company, the committee intends that by regulation the subpart F income from gain on the disposition of a lower-tier CFC generally would be reduced by income inclusions of earn-

[120] Public Law 100–647, section 1012(a)(10).

ings that were not subsequently distributed by the lower-tier CFC. The committee intends that the Secretary will have sufficient flexibility in promulgating regulations under this provision to permit adjustments only in those cases where, by virtue of the historical ownership structure of the corporations involved, the Secretary is satisfied that the inclusions for which adjustments are to be made can be clearly identified.

For example, assume that a U.S. person is the owner of all of the stock of a first-tier CFC which, in turn, is the sole shareholder of a second-tier CFC. In year 1, the second-tier CFC earns $100 of subpart F income which is included in the U.S. person's gross income for that year. In year 2, the first-tier CFC disposes of the second-tier CFC's stock and recognizes $300 of income with respect to the disposition. All of that income would constitute subpart F foreign personal holding company income. Under the bill, the Secretary is granted regulatory authority to reduce the U.S. person's year 2 subpart F inclusion by $100—the amount of year 1 subpart F income of the second-tier CFC that was included, in that year, in the U.S. person's gross income. Such an adjustment would, in effect, allow for a step-up in the basis of the stock of the second-tier CFC to the extent of its subpart F income previously included in the U.S. person's gross income.

As another example, assume the same facts as in the preceding paragraph except that in year 2, the first-tier CFC distributes the stock of the second-tier CFC to the U.S. person. Assume that as a result of the distribution, the first-tier CFC recognizes taxable income of $300 under section 311(b). This income represents subpart F income, $100 of which is due to no adjustment having been made to the basis of the second-tier CFC's stock for its year 1 subpart F income. The bill contemplates that in such a situation, the $300 of subpart F income would be reduced under regulations to $200 to account for the year 1 subpart F income inclusion.

Subpart F inclusions in year of acquisition

If a U.S. shareholder acquires the stock of a CFC from another U.S. shareholder during a taxable year of the CFC in which it earns subpart F income, the bill reduces the acquirer's subpart F income inclusion for that year by a portion of the amount of the dividend deemed (under sec. 1248) to be received by the transferor. The portion by which the inclusion is reduced (as is currently the case if a dividend was paid to the previous owner of the stock) would not exceed the lesser of the amount of dividends with respect to such stock deemed received (under sec. 1248) by other persons during the year or the amount determined by multiplying the subpart F income for the year by the proportion of the year during which the acquiring shareholder did not own the stock.

Distributions of previously taxed income

The bill clarifies the appropriate scope of regulatory authority with respect to the treatment of cross-chain section 304 dividends out of the earnings of CFC's that were previously included in the income of a U.S. shareholder under subpart F. The committee contemplates that in such a case, the Secretary in his discretion may by regulation treat such dividends as distributions of previously taxed income, with appropriate basis adjustments. It is also anticipated that other occasions may arise where the exercise of similar regulatory authority may be appropriate to avoid double income inclusions, or an inclusion or exclusion of income without a corresponding basis adjustment. Therefore, the bill provides that, in addition to cases involving section 304, the Secretary may by regulation modify the application of subpart F in any other case where there would otherwise be a multiple inclusion of any item of income (or an inclusion or exclusion without an appropriate basis adjustment) by reason of the structure of a U.S. shareholder's holdings in CFC's or by reason of other circumstances. The bill is not intended to create any inference as to the application of present law in these cases.

Treatment of U.S. income earned by a controlled foreign corporation

The bill provides that an exemption or reduction by treaty of the branch profits tax that would be imposed under section 884 on a CFC does not affect the general statutory exemption from subpart F income that is granted for U.S. source effectively connected income. For example, assume a CFC earns income of a type that generally would be subpart F income, and that income is earned from sources within the United States in connection with business operations therein. Further assume that repatriation of that income is exempted from the U.S. branch profits tax under a provision of an applicable U.S. income tax treaty. The bill provides that, notwithstanding the treaty's effect on the branch tax, the income is not treated as subpart F income as long as it is not exempt from U.S. taxation (or subject to a reduced rate of tax) under any other treaty provision.

Extension of indirect foreign tax credit

The bill extends the application of the indirect foreign tax credit (secs. 902 and 960) to certain taxes paid or accrued by certain fourth-, fifth-, and sixth-tier foreign corporations. In general, three requirements must be satisfied by a foreign company at any of these tiers to qualify for the credit. First, the company must be a CFC. Second, the domestic corporation referred to in section 902(a) must be a U.S. shareholder (as defined in sec. 951(b)) with respect to the foreign company. Third, the product of the percentage ownership of voting stock at each level from the U.S. corporation down must equal at least 5 percent. The bill limits the application of the indirect foreign tax credit below the third tier to taxes paid or incurred in taxable years during which the payor is a CFC. No inference is intended as to the availability of indirect foreign tax credits, under present law, for taxes paid by foreign corporations in the first three tiers, for periods prior to the time when the present-law ownership requirements were met as to those corporations. All foreign taxes paid below the sixth tier of foreign corporations remain ineligible for the indirect foreign tax credit.

Effective Dates

Lower-tier controlled foreign corporations

The provision of the bill that treats gains on dispositions of stock in lower-tier CFC's as dividends under section 1248 principles applies to gains recognized on transactions occurring after the date of enactment of the bill.

The provision that expands look-through treatment, for foreign tax credit limitation purposes, of dividends from CFC's, is effective for distributions after the date of enactment.

The provision that provides for regulatory adjustments to U.S. shareholder inclusions, with respect to gains of CFC's from dispositions of stock in lower-tier CFC's the earnings of which have been previously taxed under the subpart F provisions of the code, is effective for determining inclusions for taxable years of U.S. shareholders beginning after December 31, 1995. Thus, the bill permits regulatory adjustments to an inclusion occurring after the effective date to account for income previously taxed under the subpart F provisions occurring both prior to and subsequent to the effective date of the provision.

Subpart F inclusions in year of acquisition

The provision that permits dispositions of stock to be taken into consideration in determining a U.S. shareholder's subpart F inclusion for a taxable year is effective with respect to dispositions occurring after the date of enactment.

Distributions of previously taxed income

The provision that allows the Secretary to make regulatory adjustments to avoid double inclusions in cases such as those to which section 304 applies takes effect on the date of enactment.

Treatment of U.S. source income earned by a controlled foreign corporation

The provision concerning the effect of treaty exemptions from, or reductions of, the branch profits tax on the determination of subpart F income is effective for taxable years beginning after December 31, 1986.

Extension of indirect foreign tax credit

The provision that extends application of the indirect foreign tax credit to certain CFC's below the third tier is effective for foreign taxes paid or incurred by CFC's for taxable years of such corporations beginning after the date of enactment.

In the case of any chain of foreign corporations the taxes of which would be eligible for the indirect foreign tax credit, under present law or under the bill, but for the denial of indirect credits below the third or sixth tier, as the case may be, no liquidation, reorganization, or similar transaction in a taxable year beginning after the date of enactment shall have the effect of permitting taxes to be taken into account under the indirect foreign tax credit provisions of the code which could not have been taken into account under those provisions but for such transaction. As one example, no such transaction shall have the effect of permitting credits for taxes which, but for such transaction, would have been noncreditable (given the effective date provisions of the bill) because they are taxes of a fourth-, fifth-, or sixth-tier corporation for a year beginning before the date that the bill is enacted. No inference is intended regarding the creditability or noncreditability of such taxes under present law.

2. Repeal of excess passive assets provision (sec. 14414 of the bill and sec. 956A of the code)

Present Law

The United States taxes U.S. citizens and resident individuals and U.S. corporations (collectively, U.S. persons) on their worldwide income, subject to the allowance of a credit for foreign income taxes paid with respect to foreign source income. In contrast, the United States taxes nonresident aliens and foreign corporations only on income that is effectively connected with a U.S. business and on certain passive income (e.g., dividends and interest) from U.S. sources.

Absent an applicable anti-deferral rule, a U.S. person that conducts foreign operations through a foreign corporation would not be subject to U.S. tax on the income from such operations until the income is repatriated to the United States through a dividend distribution from the foreign corporation, subject to a foreign tax credit. However, the U.S. tax law contains anti-deferral regimes that apply in certain cases to require current U.S. taxation of income earned through foreign corporations.

Under the rules of subpart F (secs. 951–964), the U.S. shareholders (as defined in sec. 951(b)) of a CFC are required to include in income currently for U.S. tax purposes certain earnings of the CFC, whether or not such earnings are actually distributed currently to the shareholders.[121] The U.S. shareholders of a CFC are subject to current U.S. tax on their shares of certain income earned by the CFC (referred to as "subpart F income"). Subpart F income generally represents passive income and other income that is considered relatively moveable from one taxing jurisdiction to another (secs. 952–954).[122] The U.S. shareholders of the CFC are also subject to current U.S. tax on their shares of the CFC's earnings to the extent such earnings are invested by the CFC in certain U.S. property (e.g., a loan to the CFC's U.S. parent or an investment in U.S. real estate).

In addition to these current inclusions rules, the Omnibus Budget Reconciliation Act of 1993 (1993 Act) enacted section 956A, which applies another current inclusion rule to U.S. shareholders of a CFC. Under section 956A, the U.S. shareholders of a CFC are required to include in income currently their shares of the CFC's earnings to the extent invested in excess passive assets. A CFC has

[121] For purposes of the subpart F rules, a U.S. shareholder is a U.S. person that owns 10 percent or more of the CFC's stock (measured by vote only). A CFC is a foreign corporation in which such U.S. shareholders own more than 50 percent of the stock (measured by vote or by value).

[122] Subpart F income generally includes insurance income; investment-type income such as dividends, interest, rents, royalties, and gains on the sale of investment property (referred to as foreign personal holding company income); income from certain related-party sales; income from certain services for a related party; foreign shipping income; and certain foreign oil-related income.

excess passive assets for a taxable year generally if the average of the amounts of its passive assets exceeds 25 percent of the average of the amounts of its total assets; this calculation requires a quarterly determination of the CFC's passive assets and total assets. Special rules apply in defining passive assets, in measuring the CFC's assets, and in aggregating related CFC's for purposes of making the excess passive assets determination. Section 956A applies to earnings of a CFC accumulated in taxable years beginning after September 30, 1993.

Reasons for Change

With the enactment of section 956A, the 1993 Act added an additional layer of complexity to the subpart F rules. In addition to determining the current inclusions with respect to a CFC's subpart F income and earnings invested in U.S. property, the U.S. shareholders must now also determine the current inclusion with respect to the CFC's earnings invested in excess passive assets. Application of section 956A requires determination and measurement of the CFC's passive assets and total assets on a quarterly basis. The committee understands that compliance with section 956A imposes substantial administrative burdens on both taxpayers and the IRS.

The committee also understands that section 956A was enacted in order to restrict the benefits of tax deferral for CFC's that accumulate passive assets abroad. However, the committee further understands that the rules of section 956A operate to provide incentives for CFC's to make investments, enter into transactions, and engage in reorganizations for the purpose of avoiding the application of such section. The committee has been informed that CFC's acquire foreign assets that would not otherwise be attractive investments if such acquisitions reduce the CFC's percentage of passive assets below the threshold for application of section 956A. The committee has been further informed that some U.S. shareholders of CFC's view section 956A as having the effect of an investment tax credit for foreign investments by CFC's. The committee is concerned that section 956A provides taxpayers with incentives to engage in costly, noneconomic transactions. The committee is further concerned that section 956A provides incentives for taxpayers to make investments outside the United States that might otherwise be made in the United States. The committee believes that the administrative burdens of compliance coupled with the costs associated with transactions undertaken to avoid its application call into question the appropriateness of section 956A.

Explanation of Provision

The bill repeals section 956A.

Effective Date

The provision is effective for taxable years of U.S. shareholders beginning after September 30, 1995, and taxable years of foreign corporations ending with or within such taxable years of U.S. shareholders.

C. Other Foreign Provisions

1. Exchange rate used in translating foreign taxes (sec. 14421 of the bill and secs. 905(c) and 986(a) of the code)

Present Law

Translation of foreign taxes

Foreign income taxes paid in foreign currencies are required to be translated into U.S. dollar amounts using the exchange rate as of the time such taxes are paid to the foreign country or U.S. possession (sec. 986(a)(1)). This rule applies equally to foreign taxes paid directly by U.S. taxpayers, which taxes are creditable only in the year paid or accrued (or during a carryover period), and to foreign taxes paid by foreign corporations that are deemed paid by a U.S. corporation, and hence creditable, in the year that the U.S. corporation receives a dividend or has an income inclusion.

Redetermination of foreign taxes

For taxpayers who utilize the accrual basis of accounting for determining creditable foreign taxes, accrued and unpaid foreign tax liabilities denominated in foreign currencies are translated into U.S. dollar amounts at the exchange rate as of the last day of the taxable year of accrual.[123] In certain cases where a difference exists between the dollar value of accrued foreign taxes and the dollar value of those taxes when paid, a redetermination (or adjustment) of foreign taxes is required.[124] Generally, such an adjustment may be attributable to one of three causes. One cause would be a refund of foreign taxes. Second, a foreign tax redetermination may be required because the amount of foreign currency units actually paid differs from the amount of foreign currency units accrued. These first two cases generally give rise to a so-called section 905(c) regular adjustment. Third, a redetermination may arise due to fluctuations in the value of the foreign currency relative to the dollar between the date of accrual and the date of payment. This third case gives rise to a so-called section 905(c) translation adjustment.

As a general matter, a redetermination of foreign tax paid or accrued directly by a U.S. person requires notification of the Internal Revenue Service and a redetermination of U.S. tax liability for the taxable year for which the foreign tax was claimed as a credit. Exceptions to this rule apply for de minimis amounts of foreign tax redetermination.[125] In the case of a redetermination of foreign taxes that qualify for the indirect (or "deemed-paid") foreign tax credit under sections 902 and 960, taxpayers generally are required to make appropriate adjustments to the relevant pools of earnings and profits and foreign taxes.[126]

Reasons for Change

If each foreign income tax payment is required to be translated at a separate daily exchange rate for the day of the payment, the

[123] Temp. Treas. Reg. sec. 1.905–3T(b)(1).
[124] Temp. Treas. Reg. sec. 1.905–3T(c).
[125] Temp. Treas. Reg. sec. 1.905–3T(d)(1).
[126] Temp. Treas. Reg. sec. 1.905–3T(d)(2); Notice 90–26, 1990–1 C.B. 336.

number of currency exchange rates that are relevant to foreign tax credit calculations varies directly with the frequency of foreign income tax payments. Where U.S. corporations are deemed to pay a portion of the "pool" of foreign taxes paid by foreign corporations, the correct amount of tax in the pool is the product of each tax payment times the relevant translation rate. The longer the period between the time the income is earned and the time it is repatriated to the U.S. corporation (or otherwise included in the U.S. corporation's income), the greater the period over which the amounts of tax payments and translation rates are relevant to the determination of net U.S. tax liability.

The committee believes that the recordkeeping, verification, and examination burdens—both on the IRS and on taxpayers—associated with the advantages of deferral and the foreign tax credit (including the indirect credit) are not insignificant. For example, if events that happened in 1 year affected only the tax return filed for that year, and each return was affected only by events that happened in the year for which that return was filed, then presumably tax-related records would need to be maintained only between the time the taxable year began and the time that the assessment period for that taxable year expired. On the other hand, for example, if income earned in years 1 through 5 is taxed in year 6, then the amount of documentation relevant to the year-6 tax return potentially is increased five-fold, and the period over which that information must be maintained is at least 5 years longer.

U.S. persons who pay foreign income taxes directly and elect the benefits of the foreign tax credit have always been required to maintain detailed foreign tax payment documentation, including exchange rate data for the dates on which they paid foreign income taxes, and U.S. corporations that operate through foreign corporations have been required to maintain documentation regarding the earnings and foreign tax payments of the foreign corporations. Some have argued, however, that relief is warranted for taxpayers that would otherwise bear the currency translation responsibilities applicable to direct foreign taxpayers combined with the extended recordkeeping responsibilities applicable to taxpayers that receive the benefits of deferral.

The committee believes that an appropriate response to this combination of burdens is to permit regulatory modification of the "time of payment" concept in such a way that preserves the uniformity of treatment of branches and foreign subsidiaries of U.S. taxpayers, but permits recourse to reasonably accurate average translation rates for the period in which the tax payments are made. Simplification may be provided in this way by reducing, sometimes substantially, the number of translation calculations that are required to be made. There may be situations in which the use of an average exchange rate over a specified time period, to be applied to all tax payments made in that currency during that period, would provide results not substantially different than those that would be derived under present law. This could result, for example, where the value of a foreign currency as it relates to the U.S. dollar does not fluctuate significantly over the specified period.

In addition, the committee believes that in certain cases, taxpayers that are on the accrual basis of accounting for purposes of determining creditable foreign taxes should be permitted to translate those taxes into U.S. dollar amounts in the year to which those taxes relate, and should not be required to make adjustments or redetermination to those translated amounts, if actual tax payments are made within a reasonably short period of time after the close of such year. Moreover, the committee believes that it is appropriate to mandate the use of an average exchange rate for the taxable year with respect to which such foreign taxes relate for purposes of translating those taxes. On the other hand, the committee believes that a foreign tax not paid within a reasonably short period after the close of the year to which the taxes relate should not be treated as a foreign tax for such year; in such a case permitting the foreign tax credit for that year is less a mechanism for preventing double taxation, and more one resulting in the avoidance of all tax. By drawing a bright line between those foreign tax payment delays that do and do not require a redetermination, the committee believes that a reasonable degree of certainty and clarity will be added to the law in this area. The committee anticipates that in most cases, the combination of translating accrued taxes in this manner and exempting certain translation differences from redetermination should significantly alleviate present-law complexities, but should not provide results that are materially different from those that would appropriately be reached under present law.

One of the fundamental premises behind the amendments enacted in 1986 with respect to the translation of foreign taxes was that foreign taxes paid by foreign corporations should be translated in the same manner as foreign taxes paid by foreign branches of U.S. persons. In keeping with that premise, the committee believes that any provision to allow the use of average exchange rates for this purpose or to allow for translation in years to which accrued taxes relate should be made equally applicable to foreign branches and subsidiaries.

Explanation of Provision

In general

The bill sets forth two sets of operating rules for the translation of foreign taxes. The first set establishes new rules for the translation of certain accrued foreign taxes. The other set modifies the rules of present law for translating all other foreign taxes.

Translation of foreign taxes

Translation of certain accrued foreign taxes

With respect to taxpayers who take foreign income taxes into account when accrued for purposes of determining the foreign tax credit, the bill generally permits foreign taxes to be translated at the average exchange rate for the taxable year to which such taxes relate. If tax in excess of the accrued amount is actually paid after the date that is 2 years after the close of the years to which such taxes relate, such excess amount would be translated using the exchange rate in effect as of the time of payment.

This set of rules does not apply first, to taxpayers that are not on the accrual basis for determining creditable foreign taxes, second, with respect to taxes of an accrual-basis taxpayer that are actually paid in a taxable year prior to the year to which they relate, or third, to tax payments that are denominated in a hyperinflationary currency (as defined in Treas. Reg. Sec. 1.985–1(b)(2)(D)(ii)). In addition, as discussed in detail below, this set of rules does not apply to, and thus a redetermination of foreign tax is required for, any foreign income tax paid after the date 2 years after the close of the taxable year to which such taxes relate.

For example, assume that in year 1 a taxpayer accrues 1,000 units of foreign tax that relate to year 1. Further assume that as of the end of year 1 the tax is unpaid and the currency involved is not hyperinflationary. In this case, the bill provides that the taxpayer would translate 1,000 units of accrued foreign tax into U.S. dollars at the average exchange rate for year 1.[127] If the 1,000 units of tax were paid by the taxpayer in either year 2 or year 3, no redetermination of foreign tax would be required. If, any portion of the tax so accrued remained unpaid as of the end of year 3, however, the taxpayer would be required to redetermine its foreign tax accrued in year 1 to account for the accrued but unpaid tax.

As another example, assume a taxpayer accrues 1,000 units of foreign tax in year 2, but pays the tax in year 1. Also assume that the tax relates to year 2. In this case, the taxpayer would translate the tax using the exchange rate as of the time the tax is paid (i.e., using the applicable year 1 exchange rate) since the tax is paid in a year prior to the year to which it relates.

As an illustration of what is meant by the taxable year to which taxes relate, assume that a foreign corporation is charged by a foreign government with an income tax of 100 units for 1996. Assume that the currency involved is not hyperinflationary. Due to a contest between the foreign government and the corporation that ends in 1996, the 100 units of tax are not paid until 1997. Assume that under the U.S. rules governing accrual, the foreign tax accrues for 1996 but does not do so until 1997.[128] Under the bill, the taxes would be translated at the rate in effect for 1996, because the taxes relate to 1996, even though they did not accrue until 1997. If instead the contest was over in 1999 and the taxes were accrued and paid at that time, the translation rate used would be that of 1999, rather than 1996, because 1999 is more than 2 years after the end of 1996. Now assume that the contest was over in 2001, but the taxes were deposited in 1997 and not accrued until 2001. These taxes are paid before the beginning of the year in which the taxes were accrued (2001), but after the year to which the taxes relate (1996). In this case, under the bill, the taxes would be translated at the rate for the year (1996) to which the taxes relate. If the taxes are instead paid in 1999, they would be translated at the relevant rate for 1999 because 1999 is more than 2 years after the end of 1996.

As an additional illustration of what is meant under the bill as the taxable year to which taxes relate, assume that a foreign corporation accrues a foreign income tax of 100 units of nonhyperinflationary currency for 1996. Further assume that the actual amount of foreign tax liability of the foreign corporation for

[127] The same result would occur if the 1,000 units of tax were both accrued and paid in year 1.

[128] See, e.g., Rev. Rul. 84–125, 1984–2 C.B. 125.

1996 is 110 units, all of which is paid in 1997. Under the bill, the 110 units of foreign tax are translated at the rate in effect for 1996 because the taxes relate to 1996, even though the total tax liability for that year was not actually accrued by the taxpayer in 1996.

Finally, assume that under foreign law, a foreign income tax liability accrues in 2001 under a long-term contract method of accounting, but advance deposits of that liability accruing in 2001 are made in each of the years 1997 through 2000. Under the bill, it is intended that if the payments in 1997 through 2000 are treated as relating to 2001, these payments are nevertheless to be translated at the relevant rates for 1997 through 2000. Although the bill provides a rule for translation of the taxes in this case, no change is intended as to the application of present law accounting rules for determining the year for which the taxes are eligible for credit or deduction for U.S. income tax purposes.

Translation of all other foreign taxes

Foreign taxes not eligible for application of the preceding rules generally are translated into U.S. dollars using the exchange rates as of the time such taxes are paid. The bill grants the Secretary of the Treasury authority to issue regulations that would allow foreign tax payments made by a foreign corporation or by a foreign branch of a U.S. person to be translated into U.S. dollar amounts using an average U.S. dollar exchange rate for a specified period. The committee anticipates that the applicable average exchange rate would be the rate as published by a qualified source of exchange rate information for the period during which the tax payments were made.

Redetermination of foreign taxes

As revised by the bill, section 905(c) of the code defines a foreign tax redetermination to include: First, if accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, second, if accrued taxes are not paid before the date 2 years after the close of the taxable year to which such taxes relate, and third, if any tax paid is refunded in whole or in part. Thus, for example, the bill provides that if at the close of the second taxable year after the close of the taxable year to which an accrued tax relates, any portion of the tax so accrued has not yet been paid, a foreign tax redetermination under section 905(c) is required for the amount representing the unpaid portion of that accrued tax. That is, the accrual of any tax that is unpaid as of that date would be retroactively denied. In cases where a redetermination is required, as under present law, the bill specifies that the taxpayer must notify the Secretary, who shall redetermine the amount of the tax for the year or years affected.

The bill provides that in the case of accrued taxes not paid within the date 2 years after the close of the taxable year to which such taxes relate, whether or not such taxes were previously accrued, any such taxes if subsequently paid are taken into account for the taxable year in which paid, and no redetermination with respect to the original year of accrual is required on account of such payment. In such a case, those taxes would be translated into U.S. dollar amounts using the exchange rates in effect for the period during which such taxes are paid. Nothing in the bill is intended to change present law as to the length of time after the year to which the redetermination relates within which redetermination may be made or required.[129]

Effective Date

The provision is effective for taxes paid (in the case of taxpayers using the cash basis for determining the foreign tax credit) or accrued (in the case of taxpayers using the accrual basis for determining the foreign tax credit) in taxable years beginning after December 31, 1995.

With respect to taxes of an accrual-basis taxpayer that relate to a taxable year beginning before January 1, 1996, the return for which (if one were due) would not yet be due on date of enactment of the bill (taking into account extensions of time to file), it is contemplated that the Secretary would, in appropriate circumstances, provide taxpayers with a reasonable average-rate method for translating such taxes that are not paid until after the effective date of the bill.

The bill's changes to the foreign tax redetermination rules apply to taxes which relate to taxable years beginning after December 31, 1995. Thus, for example, the redetermination rules under the bill do not apply to a foreign tax that relates to a taxable year beginning in or before 1995, even though the tax does not properly accrue until a taxable year beginning after December 31, 1995.

2. Election to use simplified foreign tax credit limitation under the alternative minimum tax (sec. 14422 of the bill and sec. 59(a) of the code)

Present Law

Computing foreign tax credit limitations requires the allocation and apportionment of deductions between items of foreign source income and items of U.S. source income. Foreign tax credit limitations must be computed both for regular tax purposes and for purposes of the alternative minimum tax (AMT). Consequently, after allocating and apportioning deductions for regular tax foreign tax credit limitation purposes, additional allocations and apportionments generally must be performed in order to compute the AMT foreign tax credit limitation.

Reasons for Change

The process of allocating and apportioning deductions for purposes of calculating the regular and AMT foreign tax credit limitations can be complex. Taxpayers that have allocated and apportioned deductions for regular tax purposes generally must reallocate and reapportion the same deductions for AMT foreign tax credit purposes, based on assets and income that reflect AMT adjustments (including depreciation). However, the differences between regular taxable income and alternative minimum taxable income are often relevant primarily to U.S. source income. The com-

[129] See section 6501(c)(5). See also, e.g., *Pacific Metals Corp.* v. *Commissioner,* 1 T.C. 1028 (1943); *Texas Co. (Caribbean) Ltd.* v. *Commissioner,* 12 T.C. 925 (1949).

mittee believes that foreign source alternative minimum taxable income generally will not differ significantly from foreign source regular taxable income as a result of the combined effect of these differences. By permitting taxpayers to use foreign source regular taxable income in computing their AMT foreign tax credit limitation, the bill eliminates the need to reallocate and reapportion every deduction.

Explanation of Provision

The bill permits taxpayers to elect to use as their AMT foreign tax credit limitation fraction the ratio of foreign source regular taxable income to entire alternative minimum taxable income, rather than the ratio of foreign source alternative minimum taxable income to entire alternative minimum taxable income. Under this election, foreign source regular taxable income is used, however, only to the extent it does not exceed entire alternative minimum taxable income. In the event that foreign source regular taxable income does exceed entire alternative minimum taxable income, and the taxpayer has income in more than one foreign tax credit limitation category, it is intended that the foreign source taxable income in each such category generally be reduced by a pro rata portion of that excess.

The election is available only in the first taxable year beginning after December 31, 1995, for which the taxpayer claims an AMT foreign tax credit. It is intended that a taxpayer be treated, for this purpose, as claiming an AMT foreign tax credit for any taxable year for which the taxpayer chooses to have the benefits of the foreign tax credit and in which the taxpayer is subject to the alternative minimum tax or would be subject to the alternative minimum tax but for the availability of the AMT foreign tax credit. The election, once made, applies to all subsequent taxable years, and may be revoked only with the consent of the Secretary of the Treasury.

Effective Date

The provision applies to taxable years beginning after December 31, 1995.

3. Treatment of inbound and outbound transfers (secs. 14423 and 14424 of the bill and secs. 367, 1057, and 1491–1494 of the code)

Present Law

Outbound transfers

Corporate nonrecognition provisions

Certain types of exchanges relating to the organization, reorganization, and liquidation of a corporation can be made without recognition of gain to the corporation involved or to its shareholders. In 1932, Congress enacted an exception to the nonrecognition rules, which became section 367 of the 1954 code, for the case where such an exchange involves a foreign corporation. The legislative history indicates that the exception was enacted in order to prevent tax avoidance that might have otherwise occurred upon the transfer of appreciated property outside U.S. tax jurisdiction.[130] Under that provision, in determining the extent to which gain (but not loss) was recognized in these exchanges, a foreign corporation was not considered a corporation unless it was established to the satisfaction of the IRS that the exchange was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

The code now provides that if a U.S. person transfers property to a foreign corporation in connection with certain corporate organizations, reorganizations, or liquidations, the foreign corporation will not, for purposes of determining the extent to which gain is recognized on such transfer, be considered to be a corporation (sec. 367(a)(1)). Various exceptions to the operation of this rule are provided, including a broad grant of authority to provide exceptions by regulation. The statutory language has changed substantially since 1932, but it has retained in large part its primary operational mechanism—that of treating a foreign corporation as not a corporation. Because corporate status is essential to qualify for the tax-free organization, reorganization, and liquidation provisions, failure to satisfy the requirements of section 367 could result in the recognition of gain to the participant corporations and shareholders.

Excise tax on transfers to a foreign entity

At the same time that Congress enacted the original predecessor of current section 367, Congress also enacted an excise tax on outbound transfers that might not constitute income tax recognition events even after imposition of the anti-avoidance income tax rule adopted for corporate transactions. As in the case of the corporate nonrecognition override provision, the purpose of the excise tax was to check transfers of appreciated property to foreign entities for the purpose of avoidance of taxes on capital gains.[131] Therefore, as in the case of the corporate provision, the excise tax generally has been imposed only in certain cases where it has been believed necessary or appropriate to preserve U.S. tax on appreciated assets.

Under present law, the excise tax generally applies on transfers of property by a U.S. person to a foreign corporation—as paid-in surplus or as a contribution to capital—or to a foreign estate, trust, or partnership.[132] The tax is 35 percent of the amount of gain inherent in the property transferred, but not recognized for income tax purposes at the time of the transfer (sec. 1491). For income tax purposes, the basis of the appreciated property whose transfer triggers the tax is not increased to account for imposition of the tax.

The excise tax does not apply in certain cases where the transferee is exempt from U.S. tax under code sections 501–505 (sec. 1492(1)). In addition, the excise tax does not apply in some cases where income tax rules governing outbound transfers apply, either

[130] H.R. Rep. No. 708, 72d Cong., 1st Sess. 20 (1932).

[131] Id. at 52.

[132] The Internal Revenue Service has in the past wavered on the question whether this tax applies to a transfer to a foreign trust with respect to which the transferor is treated as the owner under the grantor trust rules. Compare Rev. Rul. 69–450, 1969–2 C.B. 168 (holding that such a transfer is subject to tax under section 1491); with Rev. Rul. 87–61, 1987–2 C.B. 219 (revolving Rev. Rul. 69–450, and holding that such a transfer is not subject to tax under section 1491).

by their terms or by the election of the taxpayer. Thus, the excise tax does not apply to a transfer described in section 367, or to a transfer not described in section 367 but with respect to which the taxpayer elects (before the transfer) the application of principles similar to the principles of section 367 (sec. 1492(2)).

In addition, a taxpayer may elect (under regulations prescribed by the Secretary) to treat a transfer described in section 1491 as a sale or exchange of the property transferred and to recognize as gain (but not loss) in the year of the transfer the excess of the fair market value of the property transferred over the adjusted basis (for determining gain) of the property in the hands of the transferor (sec. 1057). To the extent that gain is recognized pursuant to the election in the year of the transfer, the transfer is not subject to the excise tax, and the basis of the property in the hands of the transferee will be increased by the amount of gain recognized (sec. 1492(3)). The legislative history of the elective income recognition provision indicates that the making of an election which has as one of its principle purposes the avoidance of Federal income taxes is not permitted.[133]

The excise tax is due at the time of the transfer (sec. 1494(a)). Under regulations, the excise tax may be abated, remitted, or refunded if the taxpayer, after the transfer, elects the application of principles similar to the principles of section 367 (sec. 1494(b)).

Inbound corporate transfers

Although the legislative history of the 1932 Act indicated a concern with outbound transfers, the statutory standard for determining that a transaction did not have as one of its principal purposes tax avoidance evolved through administrative interpretation into a requirement that, in the case of transfers into the United States by a foreign corporation, tax-free treatment generally would be permitted only if the U.S. tax on accumulated earnings and profits was paid. For example, in 1968, the IRS issued guidelines (Rev. Proc. 68–23, 1968–1 C.B. 821) as to when favorable rulings "ordinarily" would be issued. As a condition of obtaining a favorable ruling with respect to certain transactions, the section 367 guidelines required the taxpayer to agree to include certain items in income (the amount to be included was called the section 367 toll charge). For example, if the transaction involved the liquidation of a foreign corporation into a domestic parent corporation, a favorable ruling was issued if the domestic parent agreed to include in its income as a dividend for the taxable year in which the liquidation occurred the portion of the accumulated earnings and profits of the foreign corporation which was properly attributable to the domestic corporation's stock interest in the foreign corporation (Rev. Proc. 68–23, sec. 3.01(1); see also sec. 3.03(1)(b)).

Absence of a toll charge on accumulated earnings of a foreign corporation upon liquidation or asset reorganization into a U.S. corporation clearly would permit avoidance of tax. For example, if a U.S. corporation owns 100 percent of the stock of a U.S. subsidiary, no tax is imposed either on a dividend from the subsidiary to the

[133] Staff of the Joint Committee on Taxation, 94th Cong., 2d Sess., "General Explanation of the Tax Reform Act of 1976," at 226 (1976).

parent (sec. 243) or the liquidation of the subsidiary into the parent (secs. 332 and 337). In each case, the earnings of the subsidiary already have been subject to U.S. tax jurisdiction, and the liquidation provisions allow nonrecognition of gain inherent in appreciated property of the subsidiary. On the other hand, if a U.S. corporation owns 100 percent of the stock of a foreign subsidiary, earnings of the subsidiary generally are not subject to current U.S. tax. Instead, tax generally is imposed on a dividend from the subsidiary to the parent, net of creditable foreign taxes. If a liquidation of the subsidiary could be accomplished tax-free under the code, U.S. tax on its earnings would be avoided; more generally, the parent would be able to succeed to the basis and other tax attributes of the foreign corporation without having subjected to U.S. tax jurisdiction the earnings that gave rise to those tax attributes.

For purposes of the transactions described above, section 367 (and its predecessors) remained largely unchanged between 1932 and 1976. In 1976, however, a number of problems caused Congress to revise section 367. One result of the 1976 revision was to separate the provision into two sets of rules: one set dealing with outbound transfers, where the statutory aim is to prevent the removal of appreciated assets or inventory from U.S. tax jurisdiction prior to their sale (sec. 367(a)), and the other set dealing with both transfers into the United States and those which are exclusively foreign (sec. 367(b)).

Section 367(b) now provides, in part, that in the case of certain exchanges in connection with which there is no transfer of property described in section 367(a)(1), a foreign corporation will be considered to be a corporation except to the extent provided in regulations which are necessary or appropriate to prevent the avoidance of Federal income taxes.

Although it is clear that absence of a toll charge on accumulated earnings of a foreign corporation upon liquidation or reorganization into a U.S. corporation leads to avoidance of tax, and Congress in 1976 noted without disapproval the adoption of IRS positions that would prevent the avoidance of tax in these cases,[134] neither section 367(b) as revised in 1976, nor its predecessors, were drafted in such a way that directly causes tax to be imposed on foreign earnings.

For example, assume that a U.S. corporation owns 100 percent of the stock of a liquidating foreign corporation, and, pursuant to regulations under section 367(b), the foreign corporation is not treated as a corporation for purposes of section 332. In that case, the U.S. corporation would be required under the code to recognize the difference between the basis and the value of its stock in the foreign corporation. That gain, however, may be more or less than the accumulated earnings of the foreign corporation attributable to the period when the U.S. corporation owned the stock of the foreign corporation.

Perhaps as a result, neither the present temporary regulations nor the proposed regulations under section 367(b) mandate a tax based on the accumulated earnings of a foreign corporation that

[134] E.g., Staff of the Joint Committee on Taxation, 94th Cong., 2d Sess., "General Explanation of the Tax Reform Act of 1976," at 264 (1976).

liquidates or reorganizes into a U.S. corporation. The temporary regulations allow the taxpayer to elect treatment of the foreign corporation as a corporation if the tax on earnings is paid. If the taxpayer chooses not to make the election, the foreign corporation is not treated as a corporation under the relevant nonrecognition provision (e.g., sec. 332, 354), but is treated as a corporation for other purposes, such as for purposes of the basis rules (secs. 334, 358, 362), and carryover provisions (sec. 381) (Temp. Treas. Reg. secs. 7.367(b)-5(b) and 7.367(b)-7(c)(2)). The proposed regulations generally require that the foreign corporation be treated as a corporation, and permit the taxpayer to elect either to pay the tax on earnings, or to pay tax on the gain; but if the latter option is chosen, adjustments must be made to either net operating loss carryovers, capital loss carryovers, or asset bases (Proposed Treas. Reg. sec. 1.367(b)-3(b)(2)).

Reasons for Change

Outbound transfers

The excise tax was intended to prevent U.S. taxpayers from transferring appreciated property to foreign entities in attempts to avoid the payment of a capital gains tax. During the 60 years since its enactment, the excise tax potentially due on a transfer has only roughly approximated the income tax consequences that would have flowed from gain recognition. In some cases the excise tax has been much harsher than that income tax.[135] Nevertheless, it is and has been the case that any taxpayer could properly avoid the excise tax by subjecting itself to the income tax. The committee understands that in some cases taxpayers are subject to the excise tax only because of inadvertent failure to elect to be subject to income tax. The committee understands that in order to defeat the tax avoidance possibilities of outbound transfers, in appropriate cases taxpayers should be subject to income tax on transfers of appreciated property to foreign entities, but not an excise tax.

Some have argued that partnership and trust provisions added to the code since 1932 generally obviate any need for either the excise tax or any new alternative provision. The committee does not agree. Implementation of many of those provisions requires regulations that may or may not exist, and may or may not adequately prevent the tax avoidance that prompted enactment of the excise tax. The committee believes that other statutes, while representing an improvement over pre-1932 law from the standpoint of preventing abuses, do not in all cases represent an adequate backstop where there is a failure to elect gain recognition or application of section 367 principles.

Inbound transfers

The committee believes that the uncertainty surrounding the IRS authority to impose conditions on the treatment of a foreign corporation as a corporation, in cases other than outbound transfers, is not suited to prevent the avoidance of tax through the use of foreign corporations in the most straightforward fashion.

[135] When the excise tax was enacted, the income tax on capital gains of individuals was 12.5 percent; the excise tax was 25 percent (Revenue Act of 1932, secs. 101 and 901).

For example, assume that a U.S. corporation establishes a 100 percent-owned foreign corporation with capital of $100 cash. Assume that the foreign corporation spends $50 on operating assets and $50 on investment assets, and that the operating assets generate $100 of earnings and profits. Assume that the value and tax basis of operating assets maintained by the company remains at $50, while the value of the investment assets declines to $25, so that the stock in the foreign corporation is worth $175. Upon liquidation of the foreign corporation, assume that the taxpayer could avail itself of a gain limitation. Potentially, the taxpayer might achieve a double deduction of the $25 loss on the investment; once by sheltering $25 of earnings from taxation on repatriation, and again when the loss on the investment asset is realized upon disposition of that asset.[136]

The committee understands that the ambiguity of the statute in this case may foster complexity. For example, in the absence of regulations, the statute authorizes treatment of the foreign corporation as a corporation, and nontaxation of any earnings of the foreign corporation. To prevent this clear avoidance of tax, the IRS is authorized to provide for a different treatment of the foreign corporation by regulations. On one hand, it could be argued that the most the IRS can do in this case is to treat the transaction as if section 332 did not exist (resulting in gain recognition to the parent of $75). On the other hand, it could be argued that the Secretary is authorized to mandate the treatment of the foreign corporation as a corporation, subject to whatever regulations are necessary or appropriate to prevent the avoidance of tax on the repatriated earnings. One result of the ambiguity is a recently proposed regulation under which $75 of the earnings are taxed upon the liquidation, with the remaining $25 of earnings subject to future tax through a mandatory reduction of certain tax attributes, such as bases in the operating assets. The committee believes that requiring full taxation of the repatriated earnings is reasonable as a matter of the historic function of section 367 to prevent tax avoidance in inbound cases, and that such tax-avoidance can be prevented more directly and simply by explicitly authorizing the IRS to dispense with the gain limitation in appropriate cases.

Explanation of Provision

Outbound transfers

The bill repeals the excise tax on outbound transfers. In its place, the bill requires the full recognition of gain on a transfer of property by a U.S. person to a foreign corporation as either paid-in surplus or a contribution to capital, or to a foreign estate, trust, or partnership. Under the bill, the Secretary of the Treasury may, however, provide regulations under which principles similar to the principles of section 367 would apply to any such transfer in lieu of the application of the full recognition rule. Moreover, the Secretary may provide rules under which recognition of gain would not be triggered by section 1491 in cases where the Secretary is satisfied that application of other code rules (such as those relating to

[136] Cf. Tech. Advice Memo. 9003005 (Sept. 28, 1989).

partnerships or trusts) would prevent the avoidance of tax consistent with the purposes of the bill. Full recognition of gain is also avoided in the case of a transfer described in section 367. It is anticipated that, prior to the promulgation of regulations, the Secretary generally will continue to permit taxpayers to elect the application of principles similar to the principles of section 367, provided the election is made by the time for filing the income tax return for the taxable year of the transfer.

Inbound transfers

The bill provides that in the case of certain corporate organizations, reorganizations, and liquidations described in section 332, 351, 354, 355, 356, or 361 in which the status of a foreign corporation as a corporation is a condition for nonrecognition by a party to the transaction, income is recognized to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes. This provision is limited in its application, under the bill, so as not to apply to a transaction in which the foreign corporation is not treated as a corporation under section 367(a)(1). Thus, the bill permits the Secretary to provide by regulations for recognition of income, without regard to the amount of gain that would be recognized in the absence of the relevant nonrecognition provision listed above. As under current law, such regulations will be subject to normal court review as to whether they are necessary or appropriate for the prevention of avoidance of Federal income taxes.

In addition, the bill clarifies that rules for income recognition under section 367(b) may also be applied in a case involving a transfer literally described in section 367(a)(1), where necessary or appropriate to prevent the avoidance of Federal income taxes.

Effective Date

The provision applies to transfers after December 31, 1995.

4. Modification of reporting threshold for stock ownership of a foreign corporation (sec. 14425 of the bill and sec. 6046 of the code)

Present Law

Several provisions of the code require U.S. persons to report information with respect to a foreign corporation in which they are shareholders or act as officers or directors. Sections 6038 and 6035 generally require every U.S. citizen or resident who is an officer, director or who owns at least 10 percent of the stock of a foreign corporation that is a controlled foreign corporation (as defined in sec. 957(a)) or a foreign personal holding company (as defined in sec. 552(a)), respectively, to file form 5471 annually. These provisions require the U.S. filer to furnish certain ownership data as well as financial information of the foreign corporation.

Section 6046 mandates the filing of information returns on behalf of a foreign corporation by certain U.S. persons upon the occurrence of certain events. U.S. persons required to file these information returns are those who own or acquire 5 percent or more of the value of the stock of a foreign corporation, others who become U.S.

persons while owning that percentage of the stock of a foreign corporation, and U.S. citizens and residents who are officers or directors of foreign corporations with such U.S. ownership. Information that is required to be furnished includes the items pertaining to the organization, acquisition or reorganization of the foreign corporation. When the predecessor of Section 6046 was enacted, Congress required information to be reported by several sources because of concerns that imposing a reporting requirement on only one party might not be sufficient to allow enforcement of the tax laws.

A failure to file the required information return could result in monetary penalties or reduction of foreign tax credit benefits under section 6038. Such a failure could result in monetary penalties under sections 6035 or 6046.

Reasons for Change

The committee believes that because the annual reporting requirements applicable to controlled foreign corporations and foreign personal holding companies under sections 6035 and 6038 continue to apply, a liberalization of the filing requirements under section 6046 will not significantly impair the ability of the IRS to determine the U.S. tax liabilities associated with the activities of the relevant foreign corporations. The committee believes that it is appropriate to make the threshold at which reporting is required under section 6046 generally parallel to the thresholds that apply under sections 6035 and 6038. Doing so will reduce the compliance burdens on taxpayers.

Explanation of Provision

The bill increases the reporting threshold for stock ownership of a foreign corporation under section 6046 from 5 percent (based on value) to 10 percent (based on vote or value).

Effective Date

The provision is effective for reportable transactions occurring after December 31, 1995.

5. Application of uniform capitalization rules to foreign persons (sec. 14426 of the bill and sec. 263A(c) of the code)

Present Law

In general

For purposes of computing a taxpayer's taxable income and earnings and profits, certain costs reduce net income as they are incurred (e.g., ordinary and necessary business expenses); other costs reduce net income only to the extent that the income-producing assets with which those costs are associated generate income. Pursuant to the code, Treasury Regulations prescribe a comprehensive set of rules for this purpose (the "uniform capitalization rules") which require certain costs—including both direct and indirect costs allocable to property—to be capitalized or included in inventory. The uniform capitalization rules generally apply to property produced by a taxpayer or acquired by a taxpayer for resale.

In the case of interest expense, the uniform capitalization rules apply to interest paid or incurred during the property's production period that is allocable to property produced by the taxpayer or acquired for resale which first, is either real property or property with a class life of at least 20 years, second, has an estimated production period exceeding 2 years, or third, has an estimated production period exceeding 1 year and a cost exceeding $1,000,000 (sec. 263A(f)).

Application to foreign persons

The uniform capitalization rules apply to foreign persons, whether or not engaged in business in the United States. In the case of a foreign corporation carrying on a U.S. trade or business, for example, the uniform capitalization rules apply for purposes of computing the corporation's U.S. effectively connected taxable income, as well as its effectively connected earnings and profits for purposes of the branch profits tax.

If a foreign corporation is not engaged in business in the United States, its taxable income and earnings and profits may nonetheless be relevant under the code. For example, the pro-rata share of the subpart F income of a controlled foreign corporation is currently includible as income by its U.S. shareholders under section 951(a)(1)(A). And whether or not a foreign corporation is U.S.-controlled, its accumulated earnings and profits must be computed in order to determine the indirect foreign tax credit carried by distributions from the foreign corporation to any domestic corporation that owns at least 10 percent of its voting stock.

The code provides that the earnings and profits or deficit in earnings and profits of any foreign corporation, for any taxable year, shall be determined according to rules substantially similar to those applicable to domestic corporations, under regulations prescribed by the Secretary of the Treasury (sec. 964(a)). Thus, foreign persons generally are required to capitalize costs in accordance with the uniform capitalization rules.

Eligible foreign persons may elect to use an alternative approach (the "U.S. ratio method") to apply the uniform capitalization rules to expenses other than interest (see Notice 88–104[137]). To apply the U.S. ratio method, there must be a similar U.S. trade or business carried on by the foreign person, or by a related party. All expenses that the foreign person otherwise treats as deductible are decreased ratably, to reflect the amount of the increase in costs capitalized under the U.S. ratio method for the taxable year. The appropriate ratio is applied to the costs of property produced or property acquired for resale incurred by the foreign person for each taxable year. A separate ratio is required to be computed for each taxable year for properties related to each separate trade or business.

[137] 1988–2 C.B. 443.

Reasons for Change

The committee believes that the requirement to maintain separate records to compute inventory accounts solely for U.S. tax purposes is unduly burdensome for foreign corporations whose activities do not give rise to current U.S. income taxation. Therefore, the committee believes that it is appropriate to ease the compliance burdens of foreign taxpayers that are not engaging in a U.S. trade or business and that do not engage in activities that give rise to current taxation to their U.S. shareholders under the subpart F provisions.

Explanation of Provision

The bill reduces the number of foreign corporations that are required to apply the uniform capitalization rules under section 263A of the code. Under the bill, a foreign corporation is subject to the uniform capitalization rules only with respect to the determination of first, its tax liability with respect to its U.S. trade or business and second, the tax liability of its U.S. shareholders under the subpart F provisions of the code. However, the committee intends that a foreign corporation that is not required to apply the uniform capitalization rules under the bill may nevertheless continue to apply such rules. Exemption from uniform capitalization rules under the bill constitutes a change of the accounting method of the foreign corporation adopted with the consent of the Secretary of Treasury. No section 481(a) adjustment will arise in connection with such change; instead, the "cut-off method" is applicable. Under the cut-off method, the value of the beginning inventory of an affected taxpayer includes amounts properly capitalized in a previous year under the uniform capitalization rules and the taxpayer would not apply the uniform capitalization rules with respect to inventory acquired or produced during the year for which the election is in effect.

Effective Date

The provision is effective for taxable years of the foreign corporation beginning after December 31, 1995.

6. Prizes and awards received by a nonresident alien relating to amateur sports competitions held in the United States (sec. 14427 of the bill and sec. 863(f) of the code)

Present Law

Amounts received as prizes or awards are generally included in gross income under section 74 of the code. The code and Treasury regulations, however, contain no specific rules addressing the source and character of income from prizes and awards received by a nonresident alien. Prizes and awards associated with athletic competitions held in the United States are generally treated as services income. Services income earned by a nonresident alien from sources within the United States is generally subject to U.S. income tax. The source of income generally follows the location where the services are performed. A limited exception is available for U.S. source compensation income not exceeding $3,000 if certain criteria are satisfied (sec. 861(a)(3)).

Income tax treaties generally contain more generous provisions to exempt personal services income from U.S. taxation. Under many U.S. income tax treaties, an unlimited amount of dependent or independent services income may be exempt from U.S. income tax if the person performing the services is present in the United States for a period of 183 days or less provided certain conditions are met. However, a number of U.S. income tax treaties also contain a special "Artistes and Athletes" provision that limits this exemption. For example, under Article XVI of the U.S.-Canada income tax treaty, a Canadian athlete is subject to U.S. tax on the income derived from athletic activities conducted within the United States unless the amount of such income, including expenses reimbursed and expenses borne on behalf of the athlete, does not exceed $15,000 for the tax year in question.

Reasons for Change

The committee believes that it is useful to provide specific statutory guidance with respect to the source of income from prizes and awards received by nonresident aliens that result from amateur sports competitions in the United States. The committee also believes that it is inappropriate to impose U.S. tax on prizes and awards received with respect to amateur sports competitions held in the United States, provided that the nonresident athlete does not perform any services in the United States for such prize or award.

Explanation of Provision

The bill treats prizes and awards received by a nonresident alien with respect to his or her participation in an amateur sports competition held within the United States as foreign source income if the recipient does not perform any services for the payor for the prize or award. Thus, the value of the prize or award would be exempt from U.S. income tax. For this purpose, amateur sports competition means any competition in which the only prizes awarded by the sponsors are of nominal value. The committee intends that medals that are awarded in athletic competitions and that contain small amounts of precious or semi-precious metals, such as Olympic medals, be considered to be of nominal value for purposes of this provision. The operation of this provision is illustrated by the examples below.

Example 1. Assume that a nonresident alien athlete, A, is a resident of a country that does not have an income tax treaty with the United States, X. A is the first place finisher in an amateur athletic competition held in the United States. The only award that A receives from the sponsor of the competition is a blue ribbon. As a result of her accomplishment in such competition, a civic association of Country X names A its "Outstanding Athlete of 1995" and presents her with a new sports car. The civic association did not announce in advance that it would provide any prize to the winner of the event in which A competed. Thus, A does not have any contractual right to the car. In addition, due to her outstanding performance in the competition, the government of Country X believes that A has brought special honor to the country and grants a special award to A of $500. Country X does not have any continuous program in place to grant awards to athletes who win in sports competitions held abroad. As under present law, the value of the sports car and the $500 special prize do not constitute U.S. source income to A.

Example 2. Assume the same facts as Example 1, but instead of the $500 special award, the government of Country X has a long-standing program to award every first-place finisher from that country the equivalent of $10,000 in local currency as an incentive to all athletes from that country. The cash award does not qualify for the exception provided by the bill, and thus is treated as U.S. source income to A.

Example 3. Assume the same facts as Example 1, but in addition an athletic equipment manufacturer donates all of the equipment to the athletes of Country X for use in connection with the competition held in the United States. A uses this equipment during the competition but does not receive any other prize or award from the manufacturer. The value of the equipment does not constitute U.S. source income.

Example 4. Assume the same facts as Example 1, but in addition A has an endorsement contract with an athletic clothing manufacturer. The contract requires A to wear the manufacturer's clothing during all competitions and provides that the athlete will receive a $15,000 bonus for every blue ribbon received in the competition. The $15,000 paid under the contract does not qualify for the exception provided by the bill, and thus is treated as U.S. source income to A.

Example 5. Assume the same facts as Example 1, but in addition an athletic shoe manufacturer enters into an arrangement with the athlete's national sports federation under which the manufacturer provides the sports federation with all of the footwear required by its athletes. The athletes wear this footwear during the competition. The manufacturer also donates $100,000 to the sports federation, with the condition that this amount be divided among all of the country's recipients of blue ribbons who actually wear the footwear during the competition. A's share of the $100,000 award does not qualify for the exception provided by the bill, and thus is treated as U.S. source income.

Example 6. Assume the same facts as Example 2, but in addition the sponsor of the athletic competition has established a related foundation, the Blue Ribbon Foundation. Winners of each competition are named Blue Ribbon Athletes and are awarded $20,000 each by the Foundation. The contest is not an amateur competition as defined by the bill. The $20,000 award from the Foundation constitutes U.S. source income to the athlete.

Effective Date

The provision is effective for prizes and awards received on or after the date of enactment.

7. Treatment for estate tax purposes of short-term obligations held by nonresident aliens (sec. 14428 of the bill and sec. 2105 of the code)

Present Law

The United States generally taxes nonresident aliens and foreign corporations on their U.S. source income or income which is effectively connected with a business conducted by them in the United States. Where a nonresident alien or foreign corporation receives interest, dividends, or other fixed or determinable annual or periodic gains, profits, and income and that income is not effectively connected with the conduct of a trade or business by the taxpayer within the United States, the United States generally imposes a 30-percent tax on the gross amount paid (code secs. 871(a) and 881).

Certain statutory exemptions from the 30-percent tax are applicable. In the case of interest, amounts that are derived from bank deposits, portfolio debt instruments and certain short-term original issue discount [OID] obligations are exempt from U.S. income taxation. A reason for such exemption is to enhance the ability of U.S. borrowers to raise capital from foreign persons. For example, in enacting the portfolio interest exemption, the Congress acknowledged that international bond issues are often exempt from withholding taxes and estate taxes imposed by foreign governments.[138] Section 2105(b) contains similar rules to exempt certain debt obligations from the U.S. estate tax imposed on nonresident aliens. Under present law, however, the income and estate tax exemptions for interest income received and debt instruments held by nonresident aliens are not in complete conformity.

The United States imposes estate tax on assets of noncitizen nonresidents that are situated in the United States at the time of the individual's death. Debt obligations of a U.S. person, the United States, a political subdivision of a State, or the District of Columbia are considered property located within the United States if held by a nonresident not a citizen of the United States (sec. 2014(c)).

Special rules apply to treat certain bank deposits and debt instruments the income from which qualifies for the bank deposit interest exemption or the portfolio interest exemption as property from without the United States despite the fact that such items are obligations of a U.S. person, the United States, a political subdivision of a State, or the District of Columbia (sec. 2105(b)). Income from such items is exempt from U.S. income tax in the hands of the nonresident recipient (secs. 871(h) and 871(i)(2)(A)). The effect of the special rules is to exclude these items from the U.S. gross estate of a nonresident not a citizen of the United States. However, no equivalent exemption is available from the U.S. estate tax for obligations held by a noncitizen nonresident that generate short-term OID income despite the fact that such income also is exempt from U.S. income tax in the hands of the nonresident recipient (sec. 871(g)(1)(B)(i)).

[138] See, e.g., Staff of the Joint Committee on Taxation, 98th Cong., 1st Sess. *General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984,* at 391 et seq.

Reasons for Change

The committee believes that it is appropriate to conform the income and estate tax treatments of short-term OID obligations held by nonresident aliens. A purpose of exempting short-term OID income derived by nonresident aliens from U.S. income tax is to enhance the ability of U.S. borrowers to raise funds from foreign lenders, and such purpose is hindered by the lack of a corresponding exemption for U.S. estate tax. Moreover, to the extent the interest from such an obligation is exempt from U.S. income tax, the inclusion of the instrument in the nonresident noncitizen's U.S. estate is a trap for the unwary.

Explanation of Provision

The bill treats any debt obligation the income from which would be eligible for the exemption for short-term OID under section 871(g)(1)(B)(i) held by a decedent on the date of his death as property situated outside of the United States in determining the U.S. estate tax liability of a nonresident not a U.S. citizen. However, a short-term OID obligation the income from which is effectively connected with a U.S. trade or business conducted by the decedent is not subject to this rule.

Effective Date

The provision is effective for estates of decedents dying after the date of enactment.

SUBTITLE E. OTHER INCOME TAX SIMPLIFICATION PROVISIONS

A. Provisions Relating to S Corporations

1. S corporations permitted to have 75 shareholders (sec. 14501 of the bill and sec. 1361 of the code)

Present Law

The taxable income or loss of an S corporation is taken into account by the corporation's shareholders, rather than by the entity, whether or not such income is distributed. A small business corporation may elect to be treated as an S corporation. A "small business corporation" is defined as a domestic corporation which is not an ineligible corporation and which does not have first, more than 35 shareholders, second, as a shareholder, a person (other than certain trusts or estates) who is not an individual, third, a nonresident alien as a shareholder, and fourth, more than one class of stock. For purposes of the 35-shareholder limitation, a husband and wife are treated as one shareholder.

Reasons for Change

The committee believes that increasing the number of eligible shareholders of an S corporation will facilitate corporate ownership by additional family members, employees and capital investors without damaging the intended simplified nature of subchapter S.

Explanation of Provision

The provision increases maximum number of eligible shareholders from 35 to 75.

Effective Date

The provision applies to taxable years beginning after December 31, 1995.

2. Electing small business trusts (sec. 14502 of the bill and sec. 1361 of the code)

Present Law

Under present law, trusts other than grantor trusts, voting trusts, certain testamentary trusts and "qualified subchapter S trusts" may not be shareholders in a S corporation. A "qualified subchapter S trust" is a trust which, under its terms, first, is required to have only one current income beneficiary (for life), second, any corpus distributed during the life of the beneficiary must be distributed to the beneficiary, third, the beneficiary's income interest must terminate at the earlier of the beneficiary's death or the termination of the trust, and fourth, if the trust terminates during the beneficiary's life, the trust assets must be distributed to the beneficiary. All the income (as defined for local law purposes) must be currently distributed to that beneficiary. The beneficiary is treated as the owner of the portion of the trust consisting of the stock in the S corporation.

Reasons for Change

The committee believes that a trust that provides for income to be distributed to (or accumulated for) a class of individuals should be allowed to hold S corporation stock. This would allow an individual to establish a trust to hold S corporation stock and "spray" income among family members (or others) who are beneficiaries of the trust. The committee believes allowing such an arrangement will facilitate family financial planning.

Explanation of Provision

In general

The provision allows stock in an S corporation to be held by certain trusts ("electing small business trusts"). In order to qualify for this treatment, all beneficiaries of the trust must be individuals or estates eligible to be S corporation shareholders, except that charitable organizations may hold contingent remainder interests. No interest in the trust may be acquired by purchase. For this purpose, "purchase" means any acquisition of property with a cost basis (determined under sec. 1012). Thus, interests in the trust must be acquired by reason of gift, bequest, etc.

A trust must elect to be treated as an electing small business trust. An election applies to the taxable year for which made and could be revoked only with the consent of the Secretary of the Treasury or his delegate.

Each potential current beneficiary of the trust is counted as a shareholder for purposes of the proposed 75 shareholder limitation (or if there were no potential current beneficiaries, the trust would be treated as the shareholder). A potential current income beneficiary means any person, with respect to the applicable period, who is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust. Where the trust disposes of all the stock in an S corporation, any person who first became so eligible during the 60 days before the disposition is not treated as a potential current beneficiary.

A qualified subchapter S trust with respect to which an election is in effect or an exempt trust is not eligible to qualify as an electing small business trust.

Treatment of items relating to S corporation stock

The portion of the trust which consists of stock in one or more S corporations is treated as a separate trust for purposes of computing the income tax attributable to the S corporation stock held by the trust. The trust is taxed at the highest individual rate (currently, 39.6 percent on ordinary income and 28 percent on net capital gain) on this portion of the trust's income. The taxable income attributable to this portion includes first, the items of income, loss, or deduction allocated to it as an S corporation shareholder under the rules of subchapter S, second, gain or loss from the sale of the S corporation stock, and third, to the extent provided in regulations, any state or local income taxes and administrative expenses of the trust properly allocable to the S corporation stock. Otherwise allowable capital losses are allowed only to the extent of capital gains.

In computing the trust's income tax on this portion of the trust, no deduction is allowed for amounts distributed to beneficiaries, and no deduction or credit is allowed for any item other than the items described above. This income is not included in the distributable net income of the trust, and thus is not included in the beneficiaries' income. No item relating to the S corporation stock could be apportioned to any beneficiary.

On the termination of all or any portion of an electing small business trust the loss carryovers or excess deductions referred to in section 642(h) is taken into account by the entire trust, subject to the usual rules on termination of the entire trust.

Treatment of remainder of items held by trust

In determining the tax liability with regard to the remaining portion of the trust, the items taken into account by the subchapter S portion of the trust are disregarded. Although distributions from the trust are deductible in computing the taxable income on this portion of the trust, under the usual rules of subchapter J, the trust's distributable net income does not include any income attributable to the S corporation stock.

Termination of trust and conforming amendment applicable to all trusts

Where the trust terminates before the end of the S corporation's taxable year, the trust takes into account its pro rata share of S corporation items for its final year. The bill makes a conforming amendment applicable to all trusts and estates clarifying that this is the present-law treatment of trusts and estates that terminate before the end of the S corporation's taxable year.

Effective Date

The provision applies to taxable years beginning after December 31, 1995.

3. Expansion of post-death qualification for certain trusts (sec. 14503 of the bill and sec. 1361 of the code)

Present Law

Under present law, trusts other than grantor trusts, voting trusts, certain testamentary trusts and "qualified subchapter S trusts" may not be shareholders in an S corporation. A grantor trust may remain an S corporation shareholder for 60 days after the death of the grantor. The 60-day period is extended to 2 years if the entire corpus of the trust is includible in the gross estate of the deemed owner. In addition, a trust may be an S corporation shareholder for 60 days after the transfer of S corporation pursuant to a will.

Reasons for Change

The committee believes that the 60-day holding period applicable to certain testamentary trusts should be expanded to facilitate estate administration.

Explanation of Provision

The provision expands the post-death holding period to 2 years for all testamentary trusts.

Effective Date

The provision applies to taxable years beginning after December 31, 1995.

4. Financial institutions permitted to hold safe harbor debt (sec. 14504 of the bill and sec. 1361 of the code)

Present Law

A small business corporation eligible to be an S corporation may not have more than one class of stock. Certain debt ("straight debt") is not treated as a second class of stock so long as such debt is an unconditional promise to pay on demand or on a specified date a sum certain in money if: First, the interest rate (and interest payment dates) are not contingent on profits, the borrower's discretion, or similar factors; second, there is no convertibility (directly or indirectly) into stock, and third, the creditor is an individual (other than a nonresident alien), an estate, or certain qualified trusts.

Reasons for Change

The committee can think of no reason why bona fide debt should not be treated as within the safe harbor simply because the debt is held by a financial institution.

Explanation of Provision

The definition of "straight debt" is expanded to include debt held by creditors, other than individuals, that are actively and regularly engaged in the business of lending money.

Effective Date

The provision applies to taxable years beginning after December 31, 1995.

5. Rules relating to inadvertent terminations and invalid elections (sec. 14505 of the bill and sec. 1362 of the code)

Present Law

Under present law, if the Internal Revenue Service ("IRS") determines that a corporation's Subchapter S election is inadvertently terminated, the IRS can waive the effect of the terminating event for any period if the corporation timely corrects the event and if the corporation and shareholders agree to be treated as if the election had been in effect for that period. Such waivers generally are obtained through the issuance of a private letter ruling. Present law does not grant the IRS the ability to waive the effect of an inadvertent invalid Subchapter S election.

In addition, under present law, a small business corporation must elect to be an S corporation no later than the 15th day of the third month of the taxable year for which the election is effective. The IRS may not validate a late election.

Reasons for Change

The committee believes that the Secretary of the Treasury should have the same authority to validate inadvertently defective subchapter S elections as it has for inadvertent subchapter S terminations.

Explanation of Provision

Under the provision, the authority of the IRS to waive the effect of an inadvertent termination is extended to allow the Service to waive the effect of an invalid election caused by an inadvertent failure to qualify as a small business corporation or to obtain the required shareholder consents (including elections regarding qualified subchapter S trusts), or both. The provision also allows the IRS to treat a late Subchapter S election as timely where the Service determines that there was reasonable cause for the failure to make the election timely. It is intended that the IRS be reasonable in exercising this authority and apply standards that are similar to those applied under present law to inadvertent subchapter S terminations and other late or invalid elections.

Effective Date

The provision applies to taxable years beginning after December 31, 1982.[139]

6. Agreement to terminate year (sec. 14506 of the bill and sec. 1377 of the code)

Present Law

In general, each item of S corporation income, deduction and loss is allocated to shareholders on a per-share, per-day basis. However, if any shareholder terminates his or her interest in an S corporation during a taxable year, the S corporation, with the consent of all its shareholders, may elect to allocate S corporation items by closing its books as of the date of such termination rather than apply the per-share, per-day rule.

Reasons for Change

The committee believes that the election to close the books of an S corporation does not need the consent of shareholders whose tax liability is unaffected by the election.

Explanation of Provision

The provision provides that, under regulations to be prescribed by the Secretary of the Treasury, the election to close the books of the S corporation upon the termination of a shareholder's interest is made by all affected shareholders and the corporation, rather than by all shareholders. The closing of the books applies only to the affected shareholders. For this purpose, "affected shareholders" means any shareholder whose interest is terminated and all shareholders to whom such shareholder has transferred shares during the year. If a shareholder transferred shares to the corporation, "affected shareholders" includes all persons who were shareholders during the year.

Effective Date

The provision applies to taxable years beginning after December 31, 1995.

7. Expansion of post-termination transition period (sec. 14507 of the bill and secs. 1377 and 6037 of the code)

Present Law

Distributions made by a former S corporation during its post-termination period are treated in the same manner as if the distributions were made by an S corporation (e.g., treated by shareholders as nontaxable distributions to the extent of the accumulated adjustment account). Distributions made after the post-termination period are generally treated as made by a C corporation (i.e., treated by shareholders as taxable dividends to the extent of earnings and profits).

[139] This is the effective date of the present-law provision regarding inadvertent terminations.

The "post-termination period" is the period beginning on the day after the last day of the last taxable year of the S corporation and ending on the later of: First, a date that is 1 year later, or second, the due date for filing the return for the last taxable year and the 120-day period beginning on the date of a determination that the corporation's S corporation election had terminated for a previous taxable year.

In addition, the audit procedures adopted by the Tax Equity and Fiscal Responsibility Act of 1982 [TEFRA] with respect to partnerships also apply to S corporations. Thus, the tax treatment of items is determined at the corporate, rather than individual level.

Reasons for Change

The committee believes that the current scope of the "post-termination period" is insufficient under present law. In addition, the committee believes that the TEFRA audit procedures should be inapplicable to entities with a limited number of owners.

Explanation of Provision

The present-law definition of post-termination period is expanded to include the 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer that follows the termination of the S corporation's election and that adjusts a subchapter S item of income, loss or deduction of the S corporation during the S period. In addition, the definition of "determination" is expanded to include a final disposition of the Secretary of the Treasury of a claim for refund and, under regulations, certain agreements between the Secretary and any person, relating to the tax liability of the person.

In addition, the provision repeals the TEFRA audit provisions applicable to S corporations and would provide other rules to require consistency between the returns of the S corporation and its shareholders.

Effective Date

The provision applies to taxable years beginning after December 31, 1995.

8. S corporations permitted to hold subsidiaries (sec. 14508 of the bill and secs. 1361 and 1362 of the code)

Present Law

A small business corporation may not be a member of an affiliated group of corporations (other than by reason of ownership in certain inactive corporations). Thus, an S corporation may not own 80 percent or more of the stock of another corporation (whether an S corporation or a C corporation).

In addition, a small business corporation may not have as a shareholder another corporation (whether an S corporation or a C corporation).

Reasons for Change

The committee understands that there are situations where taxpayers may wish to separate different trades or businesses in different corporate entities. The committee believes that, in such situations, shareholders should be allowed to arrange these separate corporate entities under parent-subsidiary arrangements as well as brother-sister arrangements.

Explanation of Provision

C corporation subsidiaries

An S corporation is allowed to own 80 percent or more of the stock of a C corporation. The C corporation subsidiary could elect to join in the filing of a consolidated return with its affiliated C corporations. An S corporation is not allowed to join in such election. Dividends received by an S corporation from a C corporation in which the S corporation has an 80 percent or greater ownership stake is not treated as passive investment income for purposes of sections 1362 and 1375 to the extent the dividends are attributable to the earnings and profits of the C corporation derived from the active conduct of a trade or business.

S corporation subsidiaries

In addition, an S corporation is allowed to own a qualified subchapter S subsidiary. The term ''ualified subchapter S subsidiary'' means a domestic corporation that is not an ineligible corporation (i.e., a corporation that would be eligible to be an S corporation if the stock of the corporation were held directly by the shareholders of its parent S corporation) if first, 100 percent of the stock of the subsidiary were held by its S corporation parent and second, for which the parent elects to treat as a qualified subchapter S subsidiary. If a subsidiary ceases to be a qualified S corporation subsidiary (either because the subsidiary fails to qualify or the parent revokes the election) another such election may not be made for the subsidiary by the parent for 5 years without the consent of the Secretary of the Treasury.

Under the election, the qualified subchapter S subsidiary is not treated as a separate corporation and all the assets, liabilities, and items of income, deduction, and credit of the subsidiary are treated as the assets, liabilities, and items of income, deduction, and credit of the parent S corporation. Thus, transactions between the S corporation parent and qualified S corporation subsidiary are not taken into account and items of the subsidiary (including accumulated earnings and profits, passive investment income, built-in gains, etc.) are considered to be items of the parent. In addition, if a subsidiary ceases to be a qualified subchapter S subsidiary (e.g., fails to meet the wholly-owned requirement), the subsidiary will be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the parent S corporation in exchange for its stock.[140]

[140] Similar rules apply with respect to wholly owned subsidiaries of real estate investment trusts [REIT's] under section 856(i) of present law.

Under the provision, if an election is made to treat an existing corporation (whether or not its stock was acquired from another person or previously held by the S corporation) as a qualified subchapter S subsidiary, the subsidiary will be deemed to have liquidated under sections 332 and 337 immediately before the election is effective. The built-in gains tax under section 1374 and the LIFO recapture tax under section 1363(d) may apply where the subsidiary was previously a C corporation. Where the stock of the subsidiary was acquired by the S corporation in a qualified stock purchase, an election under section 338 with respect to the subsidiary may be made.

Because the parent and each subsidiary corporation that is a qualified subchapter S subsidiary are treated for Federal income tax purposes as a single corporation, debt issued by a subsidiary to a shareholder of the parent corporation will be treated as debt of the parent for purposes of determining the amount of losses that may flow through to shareholders of the parent corporation under section 1366(d)(1)(B). The Secretary of the Treasury may prescribe rules as to the order that losses pass through where debt of both the parent and subsidiary corporations are held by shareholders of the parent. To the extent a shareholder of the parent S corporation is not at-risk with respect to losses of a subsidiary, the at-risk rules of section 465 may cause losses of the subsidiary to be suspended.

Effective Date

The provision applies to taxable years beginning after December 31, 1995.

9. Treatment of distributions during loss years (sec. 14509 of the bill and secs. 1366 and 1368 of the code)

Present Law

Under present law, the amount of loss an S corporation shareholder may take into account for a taxable year cannot exceed the sum of the shareholder's adjusted basis in his or her stock of the corporation and the adjusted basis in any indebtedness of the corporation to the shareholder. Any excess loss is carried forward.

Any distribution to a shareholder by an S corporation generally is tax-free to the shareholder to the extent of the shareholder's adjusted basis of his or her stock. The shareholder's adjusted basis is reduced by the tax-free amount of the distribution. Any distribution in excess of the shareholder's adjusted basis is treated as gain from the sale or exchange of property.

Under present law, income (whether or not taxable) and expenses (whether or not deductible) serve, respectively, to increase and decrease an S corporation shareholder's basis in the stock of the corporation. These rules require that the adjustments to basis for items of both income and loss for any taxable year apply before the adjustment for distributions applies.[141]

These rules limiting losses and allowing tax-free distributions up to the amount of the shareholder's adjusted basis are similar in

[141] See section 1368(d)(1); H. Rept. 97–826, p. 17; S. Rept. 97–640, p. 18; Treas. reg. sec. 1.1367–1(e).

certain respects to the rules governing the treatment of losses and cash distributions by partnerships. Under the partnership rules (unlike the S corporation rules), for any taxable year, a partner's basis is first increased by items of income, then decreased by distributions, and finally is decreased by losses for that year.[142]

In addition, if the S corporation has accumulated earnings and profits,[143] any distribution in excess of the amount in an "accumulated adjustments account" will be treated as a dividend (to the extent of the accumulated earnings and profits). A dividend distribution does not reduce the adjusted basis of the shareholder's stock. The "accumulated adjustments account" generally is the amount of the accumulated undistributed post-1982 gross income less deductions.

Reasons for Change

The committee believes that the rules regarding the treatment of distributions by S corporations during loss years should be the same as the rules applicable to partnerships.

Explanation of Provision

The provision provides that the adjustments for distributions made by an S corporation during a taxable year are taken into account before applying the loss limitation for the year. Thus, distributions during a year reduce the adjusted basis for purposes of determining the allowable loss for the year, but the loss for a year does not reduce the adjusted basis for purposes of determining the tax status of the distributions made during that year.

The provision also provides that in determining the amount in the accumulated adjustment account for purposes of determining the tax treatment of distributions made during a taxable year by an S corporation having accumulated earnings and profits, net negative adjustments (i.e., the excess of losses and deductions over income) for that taxable year are disregarded.

The following examples illustrate the application of these provisions:

Example 1.—X is the sole shareholder of corporation A, a calendar year S corporation with no accumulated earnings and profits. X's adjusted basis in the stock of A on January 1, 1996, is $1,000 and X holds no debt of A. During 1996, A makes a distribution to X of $600, recognizes a capital gain of $200 and sustains an operating loss of $900. Under the bill, X's adjusted basis in the A stock is increased to $1,200 ($1,000 plus $200 capital gain recognized) pursuant to section 1368(d) to determine the effect of the distribution. X's adjusted basis is then reduced by the amount of the distribution to $600 ($1,200 less $600) to determine the application of the loss limitation of section 1366(d)(1). X is allowed to take into account $600 of A's operating loss, which reduces X's adjusted basis to zero. The remaining $300 loss is carried forward pursuant to section 1366(d)(2).

[142] Treas. reg. sec. 1.704–1(d)(2); Rev. Rul. 66–94, 1966–1 C.B. 166.

[143] An S corporation may have earnings and profits from years prior to its subchapter S election or from pre-1983 subchapter S years.

Example 2.—The facts are the same as in Example 1, except that on January 1, 1996, A has accumulated earnings and profits of $500 and an accumulated adjustments account of $200. Under the bill, because there is a net negative adjustment for the year, no adjustment is made to the accumulated adjustments account before determining the effect of the distribution under section 1368(c).

As to A, $200 of the $600 distribution is a distribution of A's accumulated adjustments account, reducing the accumulated adjustments account to zero. The remaining $400 of the distribution is a distribution of accumulated earnings and profits [E&P] and reduces A's E&P to $100. A's accumulated adjustments account is then increased by $200 to reflect the recognized capital gain and reduced by $900 to reflect the operating loss, leaving a negative balance in the accumulated adjustment account on January 1, 1997, of $700 (zero plus $200 less $900).

As to X, $200 of the distribution is applied against X's adjusted basis of $1,200 ($1,000 plus $200 capital gain recognized), reducing X's adjusted basis to $1,000. The remaining $400 of the distribution is taxable as a dividend and does not reduce X's adjusted basis. Because X's adjusted basis is $1,000, the loss limitation does not apply to X, who may deduct the entire $900 operating loss. X's adjusted basis is then decreased to reflect the $900 operating loss. Accordingly, X's adjusted basis on January 1, 1997, is $100 ($1,000 plus $200 less $200 less $900).

Effective Date

The provision applies to taxable years beginning after December 31, 1995.

10. Treatment of S corporations under subchapter C (sec. 14510 of the bill and sec. 1371 of the code)

Present Law

Present law contains several provisions relating to the treatment of S corporations as corporations generally for purposes of the Internal Revenue Code.

First, under present law, the taxable income of an S corporation is computed in the same manner as in the case of an individual (sec. 1363(b)). Under this rule, the provisions of the code governing the computation of taxable income which are applicable only to corporations, such as the dividends received deduction, do not apply to S corporations.

Second, except as otherwise provided by the Internal Revenue Code and except to the extent inconsistent with subchapter S, subchapter C (i.e., the rules relating to corporate distributions and adjustments) applies to an S corporation and its shareholders (sec. 1371(a)(1)). Under this second rule, provisions such as the corporate reorganization provisions apply to S corporations. Thus, a C corporation may merge into an S corporation tax-free.

Finally, an S corporation in its capacity as a shareholder of another corporation is treated as an individual for purposes of subchapter C (sec. 1371(a)(2)). In 1988, the Internal Revenue Service took the position that this rule prevents the tax-free liquidation of a C corporation into an S corporation because a C corporation cannot liquidate tax-free when owned by an individual shareholder.[144] In 1992, the Internal Revenue Service reversed its position, stating that the prior ruling was incorrect.[145]

Reasons for Change

The committee wishes to provide that the position taken by the Internal Revenue Service in 1992 that allows the tax-free liquidation of a C corporation into an S corporation represents the proper policy.

Explanation of Provision

The provision repeals the rule that treats an S corporation in its capacity as a shareholder of another corporation as an individual. Thus, the provision clarifies that the liquidation of a C corporation into an S corporation will be governed by the generally applicable subchapter C rules, including the provisions of sections 332 and 337 allowing the tax-free liquidation of a corporation into its parent corporation. Following a tax-free liquidation, the built-in gains of the liquidating corporation may later be subject to tax under section 1374 upon a subsequent disposition. An S corporation also will be eligible to make a section 338 election (assuming all the requirements are otherwise met), resulting in immediate recognition of all the acquired C corporation's gains and losses (and the resulting imposition of a tax).

The repeal of this rule does not change the general rule governing the computation of income of an S corporation. For example, it does not allow an S corporation, or its shareholders, to claim a dividends received deduction with respect to dividends received by the S corporation, or to treat any item of income or deduction in a manner inconsistent with the treatment accorded to individual taxpayers.

Effective Date

The provision applies to taxable years beginning after December 31, 1995.

11. Elimination of certain earnings and profits (sec. 14511 of the bill and secs. 1362 and 1375 of the code)

Present Law

Under present law, the accumulated earnings and profits of a corporation are not increased for any year in which an election to be treated as an S corporation is in effect. However, under the subchapter S rules in effect before revision in 1982, a corporation electing subchapter S for a taxable year increased its accumulated earnings and profits if its earnings and profits for the year exceeded both its taxable income for the year and its distributions out of that year's earnings and profits. As a result of this rule, a shareholder may later be required to include in his or her income the accumulated earnings and profits when it is distributed by the corporation.

[144] PLR 8818049, (Feb. 10, 1988).
[145] PLR 9245004, (July 28, 1992).

The 1982 revision to subchapter S repealed this rule for earnings attributable to taxable years beginning after 1982 but did not do so for previously accumulated S corporation earnings and profits.

Reasons for Change

The committee believes that the existence of pre-1983 earnings and profits of an S corporation unnecessarily complicates corporate recordkeeping and constitutes a potential trap for the unwary.

Explanation of Provision

The provision provides that if a corporation is an S corporation for its first taxable year beginning after December 31, 1995, the accumulated earnings and profits of the corporation as of the beginning of that year is reduced by the accumulated earnings and profits (if any) accumulated in any taxable year beginning before January 1, 1983, for which the corporation was an electing small business corporation under subchapter S. Thus, such a corporation's accumulated earnings and profits are solely attributable to taxable years for which an S election was not in effect. This rule is generally consistent with the change adopted in 1982 limiting the S shareholder's taxable income attributable to S corporation earnings to his or her share of the taxable income of the S corporation.

Effective Date

The provision applies to taxable years beginning after December 31, 1995.

12. Carryover of disallowed losses and deductions under at-risk rules allowed (sec. 14512 of the bill and sec. 1366 of the code)

Present Law

Under section 1366, the amount of loss an S corporation shareholder may take into account cannot exceed the sum of the shareholder's adjusted basis in his or her stock of the corporation and the unadjusted basis in any indebtedness of the corporation to the shareholder. Any disallowed loss is carried forward to the next taxable year. Any loss that is disallowed for the last taxable year of the S corporation may be carried forward to the post-termination period. The "post-termination period" is the period beginning on the day after the last day of the last taxable year of the S corporation and ending on the later of: First, a date that is 1 year later, or second, the due date for filing the return for the last taxable year and the 120-day period beginning on the date of a determination that the corporation's S corporation election had terminated for a previous taxable year.

In addition, under section 465, a shareholder of an S corporation may not deduct losses that are flowed through from the corporation to the extent the shareholder is not "at-risk" with respect to the loss. Any loss not deductible in one taxable year because of the at-risk rules is carried forward to the next taxable year.

Reasons for Change

The committee believes that losses suspended by the at-risk rules should be conformed to the treatment of losses suspended by the subchapter S basis rules.

Explanation of Provision

Losses of an S corporation that are suspended under the at-risk rules of section 465 are carried forward to the S corporation's post-termination period.

Effective Date

The provision applies to taxable years beginning after December 31, 1995.

13. Adjustments to basis of inherited S stock to reflect certain items of income (sec. 14513 of the bill and sec. 1367 of the code)

Present Law

Income in respect to a decedent [IRD] generally consists of items of gross income that accrued during the decedent's lifetime but were not includible in the decedent's income before his or her death under his or her method of accounting. IRD is includible in the income of the person acquiring the right to receive such item. A deduction for the estate tax attributable to an item of IRD is allowed to such person (sec. 691(c)). The cost or basis of property acquired from a decedent is its fair market value at the date of death (or alternate valuation date if that date is elected for estate tax purposes). This basis is often referred to as a "stepped-up basis." Property that constitutes a right to receive IRD does not receive a stepped-up basis.

The basis of a partnership interest or corporate stock acquired from a decedent generally is stepped-up at death. Under Treasury regulations, the basis of a partnership interest acquired from a decedent is reduced to the extent that its value is attributable to items constituting IRD (Treas. reg. sec. 1.742–1). This rule insures that the items of IRD held by a partnership are not later offset by a loss arising from a stepped-up basis. Although S corporation income is taxed to its shareholders in a manner similar to the taxation of a partnership and its partners, no comparable regulation requires a reduction in the basis of stock in an S corporation acquired from a decedent where the S corporation holds items of IRD.

Reasons for Change

The committee believes that the present-law treatment of IRD items of an S corporation is unclear and that the treatment of such items should be similar to the treatment of identical items held by a partnership.

Explanation of Provision

The provision provides that a person acquiring stock in an S corporation from a decedent would treat as IRD his or her pro rata share of any item of income of the corporation that would have been IRD if that item had been acquired directly from the decedent. Where an item is treated as IRD, a deduction for the estate tax attributable to the item generally will be allowed under the provisions of section 691(c). The stepped-up basis in the stock in an S corporation acquired from a decedent is reduced by the extent to which the value of the stock is attributable to items consisting of IRD. This basis rule is comparable to the present-law partnership rule.

Effective Date

The provision applies with respect to decedents dying after the date of enactment.

14. S corporations eligible for rules applicable to real property subdivided for sale by noncorporate taxpayers (sec. 14514 of the bill and sec. 1237 of the code)

Present Law

Under present-law section 1237, a lot or parcel of land held by a taxpayer *other than a corporation* generally is not treated as ordinary income property solely by reason of the land being subdivided if first, such parcel had not previously been held as ordinary income property and if in the year of sale, the taxpayer did not hold other real property; second, no substantial improvement has been made on the land by the taxpayer, a related party, a lessee, or a government; and third, the land has been held by the taxpayer for 5 years.

Reasons for Change

The committee believes that rules generally applicable to individuals should be applicable to S corporations.

Explanation of Provision

The provision allows the present-law capital gains presumption in the case of land held by an S corporation. It is expected that rules similar to the attribution rules for partnerships will apply to S corporation (Treas. reg. sec. 1.1237–1(b)(3)).

Effective Date

The provision is effective for sales in taxable years beginning after December 31, 1995.

15. Effective date (sec. 14515 of the bill and sec. 1362 of the code)

Present Law

A small business corporation that terminates its subchapter S election (whether by revocation or otherwise) may not make another election to be an S corporation for 5 taxable years unless the Secretary of the Treasury consents to such election.

Reasons for Change

The committee believes that, given the changes made by the committee to subchapter S, it is appropriate to allow corporations that terminated their elections under subchapter S within the last 5 years to reelect subchapter S status without the consent of the Secretary.

Explanation of Provision

For purposes of the 5-year rule, any termination of subchapter S status in effect immediately before the date of enactment of the proposal is not be taken into account. Thus, any small business corporation that had terminated its S corporation election within the 5-year period before the date of enactment may re-elect subchapter S status upon enactment of the bill without the consent of the Secretary of the Treasury.

Effective Date

The provision is effective upon the date of enactment.

B. Provisions Relating to Regulated Investment Companies [RIC's] and Real Estate Investment Trusts [REIT's]

1. Repeal the short-short test for regulated investment companies (sec. 14521 of the bill and sec. 851(b)(3) of the code)

Present Law

A regulated investment company ("RIC") generally is treated as a conduit for Federal income tax purposes. The code provides conduit treatment by permitting a RIC to deduct dividends paid to its shareholders in computing its taxable income. In order to qualify for conduit treatment, the RIC must be a domestic corporation that, at all times during the taxable year, is registered under the Investment Company Act of 1940 as a management company or as a unit investment trust, or has elected to be treated as a business development company under that Act (sec. 851(a)). In addition, a corporation must elect such status and must satisfy certain tests (sec. 851(b)). In particular, a corporation must derive less than 30 percent of its gross income from the sale or disposition of certain investments (including stock, securities, options, futures, and forward contracts) held less than 3 months (the "short-short test") (sec. 851(b)(3)).

Reasons for Change

The short-short test restricts the investment flexibility of RIC's. The test can, for example, limit a RIC's ability to "hedge" its investment (e.g., to use options to protect against adverse market moves).

The test also burdens a RIC with significant recordkeeping, compliance, and administration costs. The RIC must keep track of the holding periods of assets and the relative percentages of short-term and long-term gain that it realizes throughout the year.

Explanation of Provision

The bill repeals the short-short test.

Effective Date

The provision is effective for taxable years beginning after the date of enactment.

2. Modifications of rules for real estate investment trusts (sec. 14531–14543 of the bill and secs. 856 and 857 of the code)

Present Law

Overview

In general, a real estate investment trust ("REIT") is an entity that receives most of its income from passive real estate related investments and that receives conduit treatment for income that is distributed to shareholders. If an entity meets the qualifications for REIT status, the portion of its income that is distributed to the investors each year generally is taxed to the investors without being subjected to a tax at the REIT level; the REIT generally is subject to a corporate tax only on the income that it retains and on certain income from property that qualifies as foreclosure property.

Election to be treated as a REIT

In order to qualify as a REIT, and thereby receive conduit treatment, an entity must elect REIT status. A newly-electing entity generally cannot have earnings and profits accumulated from any year in which the entity was in existence and not treated as a REIT (sec. 857(a)(3)). To satisfy this requirement, the entity must distribute, during its first REIT taxable year, any earnings and profits that were accumulated in non-REIT years. For this purpose, distributions by the entity generally are treated as being made from the most recently accumulated earnings and profits.

Taxation of REIT's

Overview

In general, if an entity qualifies as a REIT by satisfying the various requirements described below, the entity is taxable as a corporation on its "real estate investment trust taxable income" ("REITTI"), and also is taxable on certain other amounts (sec. 857). REITTI is the taxable income of the REIT with certain adjustments (sec. 857(b)(2)). The most significant adjustment is a deduction for dividends paid. The allowance of this deduction is the mechanism by which the REIT becomes a conduit for income tax purposes.

Capital gains

A REIT that has a net capital gain for a taxable year generally is subject to tax on such capital gain under the capital gains tax regime generally applicable to corporations (sec. 857(b)(3)). However, a REIT may diminish or eliminate its tax liability attributable to such capital gain by paying a "capital gain dividend" to its shareholders (sec. 857(b)(3)(C)). A capital gain dividend is any dividend or part of a dividend that is designated by the payor REIT as a capital gain dividend in a written notice mailed to shareholders. Shareholders who receive capital gain dividends treat the amount of such dividends as long-term capital gain regardless of their holding period of the stock (sec. 857(b)(3)(C)).

A regulated investment company ("RIC"), but not a REIT, may elect to retain and pay income tax on net long-term capital gains it received during the tax year. If a RIC makes this election, the RIC shareholders must include in their income as long-term capital gains their proportionate share of these undistributed long-term capital gains as designated by the RIC. The shareholder is deemed to have paid the shareholder's share of the tax, which can be credited or refunded to the shareholder. Also, the basis of the shareholder's shares is increased by the amount of the undistributed long-term capital gains (less the amount of capital gains tax paid by the RIC) included in the shareholder's long-term capital gains.

Income from foreclosure property

In addition to tax on its REITTI, a REIT is subject to tax at the highest rate of tax paid by corporations on its net income from foreclosure property (sec. 857(b)(4)). Net income from foreclosure property is the excess of the sum of gains from foreclosure property that is held for sale to customers in the ordinary course of a trade or business and gross income from foreclosure property (other than income that otherwise would qualify under the 75-percent income test described below) over all allowable deductions directly connected with the production of such income.

Foreclosure property is any real property or personal property incident to such real property that is acquired by a REIT as a result of default or imminent default on a lease of such property or indebtedness secured by such property, provided that (unless acquired as foreclosure property), such property was not held by the REIT for sale to customers (sec. 856(e)). A property generally may be treated as foreclosure property for a period of 2 years after the date the property is acquired by the REIT. The IRS may grant extensions of the period for treating the property as foreclosure property if the REIT establishes that an extension of the grace period is necessary for the orderly liquidation of the REIT's interest in the property. The grace period cannot be extended beyond 6 years from the date the property is acquired by the REIT.

Property will cease to be treated as foreclosure property if, after 90 days after the date of acquisition, the REIT operates the foreclosure property in a trade or business other than through an independent contractor from whom the REIT does not derive or receive any income (sec. 856(e)(4)(C)).

Income or loss from prohibited transactions

In general, a REIT must derive its income from passive sources and not engage in any active trade or business. Accordingly, in addition to the tax on its REITTI and on its net income from foreclosure property, a 100 percent tax is imposed on the net income of a REIT from "prohibited transactions" (sec. 857(b)(6)). A prohibited transaction is the sale or other disposition of property described in section 1221(1) of the code (property held for sale in the ordinary course of a trade or business) other than foreclosure property. Thus, the 100 percent tax on prohibited transactions helps to ensure that the REIT is a passive entity and may not engage in ordinary retailing activities such as sales to customers of condominium units or subdivided lots in a development project. A safe harbor is provided for certain sales that otherwise might be considered prohibited transactions (sec. 857(b)(6)(C)). The safe harbor is limited to seven or fewer sales a year or, alternatively, any number of sales provided that the aggregate adjusted basis of the property sold does not exceed 10 percent of the aggregate basis of all the REIT's assets at the beginning of the REIT's taxable year.

Requirements for REIT Status

A REIT must satisfy four tests on a year-by-year basis: organizational structure, source of income, nature of assets, and distribution of income. These tests are intended to allow conduit treatment in circumstances in which a corporate tax otherwise would be imposed, only if there really is a pooling of investment arrangement that is evidenced by its organizational structure, if its investments are basically in real estate assets, and if its income is passive income from real estate investment, as contrasted with income from the operation of business involving real estate. In addition, substantially all of the entity's income must be passed through to its shareholders on a current basis.

Organizational structure requirements

To qualify as a REIT, an entity must be for its entire taxable year a corporation or an unincorporated trust or association that would be taxable as a domestic corporation but for the REIT provisions, and must be managed by one or more trustees (sec. 856(a)). The beneficial ownership of the entity must be evidenced by transferable shares or certificates of ownership. Except for the first taxable year for which an entity elects to be a REIT, the beneficial ownership of the entity must be held by 100 or more persons, and the entity may not be so closely held by individuals that it would be treated as a personal holding company if all its adjusted gross income constituted personal holding company income. A REIT is disqualified for any year in which it does not comply with regulations to ascertain the actual ownership of the REIT's outstanding shares.

Income requirements

Overview

In order for an entity to qualify as a REIT, at least 95 percent of its gross income generally must be derived from certain passive sources (the "95-percent test"). In addition, at least 75 percent of its income generally must be from certain real estate sources (the "75-percent test"), including rents from real property.

In addition, less than 30 percent of the entity's gross income may be derived from gain from the sale or other disposition of stock or securities held for less than 1 year, real property held less than 4 years (other than foreclosure property, or property subject to an involuntary conversion within the meaning of sec. 1033), and property that is sold or disposed of in a prohibited transaction (sec. 856(c)(4)).

Definition of rents

For purposes of the income requirements, rents from real property generally include rents from interests in real property, charges for services customarily rendered or furnished in connection with the rental of real property, whether or not such charges are separately stated, and rent attributable to personal property that is leased under or in connection with a lease of real property, but only if the rent attributable to such personal property does not exceed 15 percent of the total rent for the year under the lease (sec. 856(d)(1)).

Services provided to tenants are regarded as customary if, in the geographic market within which the building is located, tenants in buildings that are of a similar class (for example, luxury apartment buildings) are customarily provided with the service. The furnishing of water, heat, light, and air conditioning, the cleaning of windows, public entrances, exits, and lobbies, the performance of general maintenance, and of janitorial and cleaning services, the collection of trash, the furnishing of elevator services, telephone answering services, incidental storage space, laundry equipment, watchman or guard service, parking facilities and swimming pool facilities are examples of services that are customarily furnished to tenants of a particular class of buildings in many geographical marketing areas (Treas. Reg. sec. 1.856–4(b)).

In addition, amounts are not treated as qualifying rent if received from certain parties in which the REIT has an ownership interest of 10 percent or more (sec. 856(d)(2)(B)). For purposes of determining the REIT's ownership interest in a tenant, the attribution rules of section 318 apply, except that 10 percent is substituted for 50 percent where it appears in subparagraph (C) of section 318(a)(2) and 318(a)(3) (sec. 856(d)(5)).

Finally, where a REIT furnishes or renders services to the tenants of rented property, amounts received or accrued with respect to such property generally are not treated as qualifying rents unless the services are furnished through an independent contractor (sec. 856(d)(2)(C)). A REIT may furnish or render a service directly, however, if the service would not generate unrelated business taxable income under section 512(b)(3) if provided by an organization described in section 511(a)(2). In general, an independent contractor is a person who does not own more than a 35 percent interest in the REIT, and in which no more than a 35 percent interest is held by persons with a 35 percent or greater interest in the REIT (sec. 856(d)(3)).

Hedging instruments

Interest rate swaps or cap agreements that protect a REIT from interest rate fluctuations on variable rate debt incurred to acquire or carry real property are treated as securities under the 30-percent test and payments under these agreements are treated as qualifying under the 95-percent test (sec. 856(c)(6)(G)).

Treatment of shared appreciation mortgages

For purposes of the income requirements for qualification as a REIT, and for purposes of the prohibited transaction provisions, any income derived from a "shared appreciation provision" is treated as gain recognized on the sale of the "secured property." For these purposes, a shared appreciation provision is any provision that is in connection with an obligation that is held by the REIT and secured by an interest in real property, which provision entitles the REIT to receive a specified portion of any gain realized on the sale or exchange of such real property (or of any gain that would be realized if the property were sold on a specified date). Secured property for these purposes means the real property that secures the obligation that has the shared appreciation provision.

In addition, for purposes of the income requirements for qualification as a REIT, and for purposes of the prohibited transactions provisions, the REIT is treated as holding the secured property for the period during which it held the shared appreciation provision (or, if shorter, the period during which the secured property was held by the person holding such property), and the secured property is treated as property described in section 1221(1) if it is such property in the hands of the obligor on the obligation to which the shared appreciation provision relates (or if it would be such property if held by the REIT). For purposes of the prohibited transaction safe harbor, the REIT is treated as having sold the secured property at the time that it recognizes income on account of the shared appreciation provision, and any expenditures made by the holder of the secured property are treated as made by the REIT.

Asset requirements

To satisfy the asset requirements to qualify for treatment as a REIT, at the close of each quarter of its taxable year, an entity must have at least 75 percent of the value of its assets invested in real estate assets, cash and cash items, and government securities (sec. 856(c)(5)(A)). Moreover, not more than 25 percent of the value of the entity's assets can be invested in securities of any one issuer (other than government securities and other securities described in the preceding sentence). Further, these securities may not comprise more than 5 percent of the entity's assets or more than 10 percent of the outstanding voting securities of such issuer (sec. 856(c)(5)(B)). The term real estate assets is defined to mean real property (including interests in real property and mortgages on real property) and interests in REIT's (sec. 856(c)(6)(B)).

REIT subsidiaries

Under present law, all the assets, liabilities, and items of income, deduction, and credit of a "qualified REIT subsidiary" are treated as the assets, liabilities, and respective items of the REIT that owns the stock of the qualified REIT subsidiary. A subsidiary of a REIT is a qualified REIT subsidiary if and only if 100 percent of the subsidiary's stock is owned by the REIT at all times that the subsidiary is in existence. If at any time the REIT ceases to own 100 percent of the stock of the subsidiary, or if the REIT ceases to qualify for (or revokes an election of) REIT status, such subsidiary is treated as a new corporation that acquired all of its assets in exchange for its stock (and assumption of liabilities) immediately before the time that the REIT ceased to own 100 percent of the subsidiary's stock, or ceased to be a REIT as the case may be.

Distribution requirements

To satisfy the distribution requirement, a REIT must distribute as dividends to its shareholders during the taxable year an amount equal to or exceeding (i) the sum of 95 percent of its REITTI other than net capital gain income and 95 percent of the excess of its net income from foreclosure property over the tax imposed on that income minus (ii) certain excess noncash income (described below).

Excess noncash items include (a) the excess of the amounts that the REIT is required to include in income under section 467 with respect to certain rental agreements involving deferred rents, over the amounts that the REIT otherwise would recognize under its regular method of accounting, second, in the case of a REIT using the cash method of accounting, the excess of the amount of original issue discount and coupon interest that the REIT is required to take into account with respect to a loan to which section 1274 applies, over the amount of money and fair market value of other property received with respect to the loan, and third, income arising from the disposition of a real estate asset in certain transactions that failed to qualify as like-kind exchanges under section 1031.

Reasons for Change

The REIT serves as a means whereby numerous small investors can have a practical opportunity to invest in a diversified portfolio of real estate assets and have the benefit of professional management. The committee believes that the asset requirements of present law ensure that a REIT acts as a pass-through entity for taxpayers wishing to invest in real estate. Therefore, the committee finds the 30-percent gross income test unnecessary and administratively burdensome. The committee further finds that financial markets have changed over the past decade such that interest risk can be managed by many strategies other than swaps and caps. Recognizing these developments in the financial markets, the committee believes it necessary to modify the classification of income from certain hedging instruments to provide flexibility to REIT's in managing risk for their shareholders. The committee also believes that, as a pass-through entity, REIT's should be permitted to retain the proceeds of realized capital gains in a manner comparable to that accorded to RIC's.

Explanation of Provision

Overview

The bill modifies many of the provisions relating to the requirements for qualification as, and the taxation of, a REIT. In particular, the modifications relate to the general requirements for qualification as a REIT, the taxation of a REIT, the income requirements for qualification as a REIT, and certain other provisions.

Election to be treated as a REIT

The bill changes the ordering rule for purposes of the requirement that newly-electing REIT's distribute earnings and profits that were accumulated in non-REIT years. Under the provision, distributions of accumulated earnings and profits generally would be treated as made from the entity's earliest accumulated earnings and profits, rather than the most recently accumulated earnings and profits. These distributions would not be treated as distributions for purposes of calculating the dividends paid deduction.

Taxation of REIT's

Capital gains

The bill permits a REIT to elect to retain and pay income tax on net long-term capital gains it received during the tax year, just as a RIC is permitted under present law. Thus, if a REIT made this election, the REIT shareholders would include in their income as long-term capital gains their proportionate share of the undistributed long-term capital gains as designated by the REIT. The shareholder would be deemed to have paid the shareholder's share of the tax, which could be credited or refunded to the shareholder. Also, the basis of the shareholder's shares would be increased by the amount of the undistributed long-term capital gains (less the amount of capital gains tax paid by the REIT) included in the shareholder's long-term capital gains.

Income from foreclosure property

The bill lengthens the original grace period for foreclosure property until the last day of the third full taxable year following the election. The grace period also could be extended for an additional 3 years by filing a request to the IRS. Under the bill, a REIT could revoke an election to treat property as foreclosure property for any taxable year by filing a revocation on or before its due date for filing its tax return.

In addition, the bill conforms the definition of independent contractor for purposes of the foreclosure property rule (sec. 856(e)(4)(C)) to the definition of independent contractor for purposes of the general rules (sec. 856(d)(2)(C)).

Income or loss from prohibited transactions

The bill also excludes from the prohibited sales rules property that was involuntarily converted.

Organizational structure requirements

The bill replaces the rule that disqualifies a REIT for any year in which the REIT failed to comply with regulations to ascertain its ownership, with an intermediate penalty for failing to do so. The penalty would be $25,000 ($50,000 for intentional violations) for any year in which the REIT did not comply with the ownership regulations. The REIT also would be required, when requested by the IRS, to send curative demand letters.

In addition, a REIT that complied with the regulations for ascertaining its ownership, and which did not know, or have reason to know, that it was so closely held as to be classified as a personal holding company, would not be treated as a personal holding company.

Income requirements

Overview

The bill repeals the rule that requires less than 30 percent of a REIT's gross income be derived from gain from the sale or other disposition of stock or securities held for less than 1 year, certain real property held less than 4 years, and property that is sold or disposed of in a prohibited transaction.

Definition of rents

The bill permits a REIT to render a *de minimis* amount of impermissible services to tenants, or in connection with the management of property, and still treat amounts received with respect to that property as rent. The value of the impermissible services could not exceed 1 percent of the gross income from the property. For these purposes, the services could not be valued at less than 150 percent of the REIT's direct cost of the services.

In addition, the bill modifies the application of section 318(a)(3)(A) (attribution to partnerships) for purposes of defining rent in section 856(d)(2), so that attribution would occur only when a partner owns a 25 percent or greater interest in the partnership.

Hedging instruments

The bill treats income from all hedges that reduce the interest rate risk of REIT liabilities, not just from interest rate swaps and caps, as qualifying income under the 95-percent test. Thus, payments to a REIT under an interest rate swap, cap agreement, option, futures contract, forward rate agreement or any similar financial instrument entered into by the REIT to hedge its indebtedness incurred or to be incurred (and any gain from the sale or other disposition of these instruments) would be treated as qualifying income for purposes of the 95-percent test.

Asset requirements

REIT subsidiaries

The bill permits any wholly-owned corporation of a REIT to be treated as a qualified subsidiary, regardless of whether the corporation had always been owned by the REIT. The bill treats any such subsidiary as being liquidated as of the time of acquisition by the REIT and then reincorporated (thus, any of the subsidiary's pre-REIT built-in gain would be subject to tax under the normal rules of section 337). In addition, any pre-REIT earnings and profits of the subsidiary must be distributed before the end of the REIT's taxable year.

Distribution requirements

The bill first, expands the class of excess noncash items to include income from the cancellation of indebtedness and second, extends the treatment of original issue discount and coupon interest as excess noncash items to REIT's that use an accrual method of taxation.

Effective Date

The provisions are effective for taxable years beginning after the date of enactment.

C. Accounting Provisions

1. Modifications to the look-back method for long-term contracts (sec. 14551 of the bill and sec. 460 of the code)

Present Law

Taxpayers engaged in the production of property under a long-term contract generally must compute income from the contract under the percentage of completion method. Under the percentage of completion method, a taxpayer must include in gross income for any taxable year an amount that is based on the product of first, the gross contract price and second, the percentage of the contract completed as of the end of the year. The percentage of the contract completed as of the end of the year is determined by comparing costs incurred with respect to the contract as of the end of the year with estimated total contract costs.

Because the percentage of completion method relies upon estimated, rather than actual, contract price and costs to determine gross income for any taxable year, a "look-back method" is applied in the year a contract is completed in order to compensate the taxpayer (or the Internal Revenue Service) for the acceleration (or deferral) of taxes paid over the contract term. The first step of the look-back method is to reapply the percentage of completion method using actual contract price and costs rather than estimated contract price and costs. The second step generally requires the taxpayer to recompute its tax liability for each year of the contract using gross income as reallocated under the look-back method. If there is any difference between the recomputed tax liability and the tax liability as previously determined for a year, such difference is treated as a hypothetical underpayment or overpayment of tax to which the taxpayer applies a rate of interest equal to the overpayment rate, compounded daily.[146] The taxpayer receives (or pays) interest if the net amount of interest applicable to hypothetical overpayments exceeds (or is less than) the amount of interest applicable to hypothetical underpayments.

The look-back method must be reapplied for any item of income or cost that is properly taken into account after the completion of the contract.

The look-back method does not apply to any contract that is completed within two taxable years of the contract commencement date and if the gross contract price does not exceed the lesser of first, $1 million or second, 1 percent of the average gross receipts of the taxpayer for the preceding 3 taxable years. In addition, a simplified look-back method is available to certain pass-through entities and, pursuant to Treasury regulations, to certain other taxpayers. Under the simplified look-back method, the hypothetical

[146] The overpayment rate equals the applicable Federal short-term rate plus 2 percentage points. This rate is adjusted quarterly by the IRS. Thus, in applying the look-back method for a contract year, a taxpayer may be required to use five different interest rates.

underpayment or overpayment of tax for a contract year generally is determined by applying the highest rate of tax applicable to such taxpayer to the change in gross income as recomputed under the look-back method.

Reasons for Change

Present law may require multiple applications of the look-back method with respect to a single contract or may otherwise subject contracts to the look-back method even though amounts necessitating the look-back calculations are de minimis relative to the aggregate contract income. In addition, the use of multiple interest rates complicates the mechanics of the look-back calculation. The committee wishes to address these concerns.

Explanation of Provision

Election not to apply the look-back method for de minimis amounts

The provision provides that a taxpayer may elect not to apply the look-back method with respect to a long-term contract if for each prior contract year, the cumulative taxable income (or loss) under the contract as determined using estimated contract price and costs is within 10 percent of the cumulative taxable income (or loss) as determined using actual contract price and costs.

Thus, under the election, upon completion of a long-term contract, a taxpayer would be required to apply the first step of the look-back method (the reallocation of gross income using actual, rather than estimated, contract price and costs), but is not required to apply the additional steps of the look-back method if the application of the first step resulted in de minimis changes to the amount of income previously taken into account for each prior contract year.

The election applies to all long-term contracts completed during the taxable year for which the election is made and to all long-term contracts completed during subsequent taxable years, unless the election is revoked with the consent of the Secretary of the Treasury.

Example 1.—A taxpayer enters into a 3-year contract and upon completion of the contract, determines that annual net income under the contract using actual contract price and costs is $100,000, $150,000, and $250,000, respectively, for years 1, 2, and 3 under the percentage of completion method. An electing taxpayer need not apply the look-back method to the contract if it had reported cumulative net taxable income under the contract using estimated contract price and costs of between $90,000 and $110,000 as of the end of year 1; and between $225,000 and $275,000 as of the end of year 2.

Election not to reapply the look-back method

The provision provides that a taxpayer may elect not to reapply the look-back method with respect to a contract if, as of the close of any taxable year after the year the contract is completed, the cumulative taxable income (or loss) under the contract is within 10 percent of the cumulative look-back income (or loss) as of the close of the most recent year in which the look-back method was applied (or would have applied but for the other de minimis exception described above). In applying this rule, amounts that are taken into account after completion of the contract are not discounted.

Thus, an electing taxpayer need not apply or reapply the look-back method if amounts that are taken into account after the completion of the contract are de minimis.

The election applies to all long-term contracts completed during the taxable year for which the election is made and to all long-term contracts completed during subsequent taxable years, unless the election is revoked with the consent of the Secretary of the Treasury.

Example 2.—A taxpayer enters into a 3-year contract and reports taxable income of $12,250, $15,000 and $12,750, respectively, for years 1 through 3 with respect to the contract. Upon completion of the contract, cumulative look-back income with respect to the contract is $40,000, and 10 percent of such amount is $4,000. After the completion of the contract, the taxpayer incurs additional costs of $2,500 in each of the next three succeeding years (years 4, 5, and 6) with respect to the contract. Under the provision, an electing taxpayer does not reapply the look-back method for year 4 because the cumulative amount of contract taxable income ($37,500) is within 10 percent of contract look-back income as of the completion of the contract ($40,000). However, the look-back method must be applied for year 5 because the cumulative amount of contract taxable income ($35,000) is not within 10 percent of contract look-back income as of the completion of the contract ($40,000). Finally, the taxpayer does not reapply the look-back method for year 6 because the cumulative amount of contract taxable income ($32,500) is within 10 percent of contract look-back income as of the last application of the look-back method ($35,000).

Interest rates used for purposes of the look-back method

The provision provides that for purposes of the look-back method, only one rate of interest is to apply for each accrual period. An accrual period with respect to a taxable year begins on the day after the return due date (determined without regard to extensions) for the taxable year and ends on such return due date for the following taxable year. The applicable rate of interest is the overpayment rate in effect for the calendar quarter in which the accrual period begins.

Effective Date

The provision applies to contracts completed in taxable years ending after the date of enactment.

2. Application of mark to market accounting method to traders in securities (sec. 14552 of the bill and sec. 475 of the code)

Present Law

Methods of accounting, in general

In general, a taxpayer must compute its taxable income under a method of accounting on the basis of which the taxpayer regularly keeps its books so long as, in the opinion of the Secretary of the

Treasury, such method clearly reflects the taxpayer's income. A taxpayer may change its method of accounting with the consent of the Secretary.

Dealers in securities

A dealer in securities must compute its income pursuant to a "mark-to-market" method of accounting prescribed by section 475. Under section 475, any security that is inventory in the hands of a dealer must be included in inventory at its fair market value and any security that is not inventory in the hands of a dealer and that is held at year end shall be treated as sold for its fair market value. For this purpose, a "dealer in securities" is any person who first, regularly purchases securities from or sells securities to customers in the ordinary course of a trade or business, or second, regularly offers to enter into, assume, offset, assign or otherwise terminate positions in securities with customers in the ordinary course of a trade or business. For this purpose, "security" means any stock in a corporation; any partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; any note, bond, debenture, or other evidence of indebtedness; any interest rate, currency or equity notional principal contract; any evidence of an interest in, or a derivative financial instrument of, any security described above; and any position identified as a hedge of any of the above (other than a section 1256(a) contract). Section 475 generally does not apply to any security identified as held for investment (or a hedge of such security). Any gain or loss taken into account under section 475 generally is treated as ordinary gain or loss (sec. 475(d)(3)).

Traders in securities

Traders in securities generally are taxpayers who derive their income principally from the active sale or exchange of securities on the market (rather than to customers, as in the case of a dealer in securities). Section 475 does not explicitly apply to traders in securities. In fact, there are no specific statutory provisions that mandate the use of an overall method of accounting by traders.[147] Thus, traders generally account for gains and losses on trading securities when the securities are sold, rather than marking the securities to market, for Federal income tax purposes.

Reasons for Change

The committee believes that in certain instances the mark-to-market method of accounting more accurately reflects the income of a trader in securities and that it may be appropriate to extend the use of that method in those cases. The committee believes, at this time, that the determination of whether the mark-to-market method of accounting is appropriate for a particular trader in securities should be made on a case-by-case basis, subject to the discretion of the Secretary of the Treasury.

[147] However, under section 1256 certain regulated futures contracts, foreign currency contracts, and nonequity options of traders must be marked to market for Federal income tax purposes.

Explanation of Provision

The provision provides that a trader in securities may, with the consent of the Secretary of the Treasury, elect to change its method of accounting to adopt a mark-to-market method for its trading activities. Such method may be based on the provisions of present-law section 475, modified to clearly reflect the income of the taxpayer. The adoption of a mark-to-market method of accounting may not change the character of the gain or loss with respect to the securities (i.e., sec. 475(d)(3) could not apply). In determining whether a trader should be allowed to adopt a mark-to-market method of accounting, the Secretary shall take into account all relevant facts and circumstances, including transaction entered into, and accounting methods used, by parties related to the trader. As under present law, the accounting method change is subject to such conditions and procedures as the Secretary of the Treasury may prescribe. In addition, the Secretary may prescribe conditions and procedures under which a taxpayer may adopt a mark-to-market method of accounting without first seeking the consent of the Secretary. For this purpose, a trader in securities is a taxpayer who is actively engaged in trading securities.

No inference is intended whether the Secretary of the Treasury has the authority under present law to allow taxpayers that are not dealers in securities to use a mark-to-market method of accounting.

Effective Date

The provision is effective for taxable years ending on or after December 31, 1995.

3. Modification of ruling amounts for nuclear decommissioning costs (sec. 14553 of the bill and sec. 468A of the code)

Present Law

Under the economic performance rules, a deduction for accrual basis taxpayers generally is deferred until there is economic performance for the item for which the deduction is claimed (sec. 461(h)). Present law contains an exception to the economic performance rules under which a taxpayer responsible for nuclear power plant decommissioning may elect to deduct contributions made to a qualified nuclear decommissioning fund (sec. 468A).[148] Taxpayers who do not elect this provision are subject to the general economic performance rules.

A qualified decommissioning fund is a segregated fund established by the taxpayer that is used exclusively for the payment of decommissioning costs, taxes on fund income, payment of management costs of the fund, and investment in certain types of investments. The fund is prohibited from dealing with the taxpayer that established the fund.

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[148] As originally enacted in 1984, the fund paid tax on its earnings at the top corporate rate and, as a result, there would be no present value tax benefit of making deductible contributions to the fund. Also, as originally enacted, the funds in the trust could be invested only in certain relatively safe investments. Subsequent amendments to the provision have reduced the rate of tax on the fund to 20 percent and removed the restrictions on the types of permitted investment that the fund can make.

Contributions to the fund are deductible in the year made to the extent that these amounts were collected as part of the cost of service to ratepayers. Withdrawals of funds by the taxpayer to pay for decommissioning expenses are included in income at that time, but the taxpayer also is entitled to a deduction at that time for decommissioning expenses as economic performance for those costs occurs.

In order to prevent accumulations of funds over the remaining life of the plant in excess of those required to pay future decommissioning costs and to ensure that contributions to the funds are not deducted more rapidly than level funding, taxpayers are required to obtain a ruling from the IRS to establish the maximum contribution that may be made to the fund. The IRS is directed to review the ruling amount at least once during the plant's life, but may do so more frequently at the request of the taxpayer. The existing Treasury regulations provide that there is one required request per reactor, even where there are sites on which there are multiple reactors. Changes in the initial ruling amount may be warranted as a result of changes in the estimated cost of decommissioning a reactor, changes to the investment return on assets held in the fund, or changes brought about by ratemaking orders. Taxpayers are required to obtain subsequent rulings to reflect changes in the ruling amount in certain instances (Treas. reg. sec. 1.468A–3(i)).

If the decommissioning fund fails to comply with the qualification requirements, or when the decommissioning is substantially completed, the fund's qualification may be terminated in which case the amounts in the fund must be included in the income of the taxpayer.

Reasons for Change

The committee believes that it is appropriate to require a taxpayer to obtain an initial ruling from the IRS in order to determine the maximum deduction that can be obtained for contributions to a nuclear decommissioning fund. However, the committee also believes that it is burdensome for the taxpayer to obtain subsequent rulings whenever the underlying facts change so that the initial ruling amount is no longer appropriate, so long as the new ruling amount can be readily determined by the application of a method or formula set out in the initial ruling to the new facts.

Explanation of Provision

The provision deletes the requirement that a taxpayer obtain certain rulings from the IRS in order to deduct contributions to a nuclear decommissioning fund. Under the provision, a taxpayer is required to obtain an initial ruling to determine its maximum deduction for contributions to a fund, but is not required to obtain subsequent rulings if such amounts are not substantially modified. The taxpayer is required to notify the Secretary of the Treasury if the ruling amount is modified. The Secretary of the Treasury is expected to issue appropriate guidance as to what constitutes a substantial modification under the provision and how the taxpayer is to inform the Secretary that the ruling amount has been modified.

Effective Date

The provision applies to modifications after the date of enactment

4. Election of alternative taxable years by partnerships and S corporations (sec. 14554 of the bill and sec. 444 and new sec. 6654A of the code)

Present Law

The taxable income of a partnership or an S corporation (a "flow-thru entity") generally is reported by the partnership's partners or the corporation's shareholders (the "owners") in the taxable year within which the taxable year of the flow-thru entity ends. As a result, if a flow-thru entity uses a taxable year that is the same as the taxable year of its owners, the owners will report income earned by the entity in the year that the income is earned. If a flow-thru entity uses a taxable year that is different than the taxable year of its owners, the owners will defer reporting a portion of the income earned by the entity until the year following the year the income was earned.[149] Thus, in order to avoid this deferral, under present law, a flow-through entity generally must use a taxable year that corresponds to the taxable years of its owners (i.e., generally, the calendar year in the case of an entity owned by individuals).

However, under certain circumstances, deferral through use of a fiscal year is permitted (sec. 444). A flow-thru entity may use a fiscal year that it used prior to 1987 or a fiscal year that provides up to a 3-month deferral so long as it makes a payment equal to the income attributable to the deferral period times the highest individual tax rate plus 1 percentage point (currently, 40.6 percent). Such payments remain on deposit and may be refunded if the income of the entity for the deferral period diminishes or the entity abandons its fiscal year (sec. 7519). Under Treasury regulations, the 3-month deferral rule and the payment rule described above are not required for a fiscal year for which the entity establishes a business purpose to the satisfaction of the IRS (Treas. Reg. sec. 1.444–1T(a)(3)(i)).

The due date for the tax return of a partnership is the 15th day of the 4th month following the taxpayer's yearend. The due date for the tax return of an S corporation is the 15th day of the 3d month following the taxpayer's yearend.

Reasons for Change

The committee believes there are valid business reasons for a flow-thru entity to use a fiscal year and, in such instances, the entity should be allowed to adopt such a year for Federal income tax purposes. On the other hand, the committee recognizes that the use

[149] For example, assume that an individual using a calendar year wholly owns the stock of an S corporation using a fiscal year ending January 31. If for its fiscal year beginning February 1, 1994, and ending January 31, 1995, the corporation earned $1,000 a month, the individual would report the $12,000 of aggregate corporate in his calendar year ending December 31, 1995, even though $11,000 had been earned by the corporation during 1994.

of a fiscal year may provide owners of a flow-thru entity with an unwarranted deferral of the income generated by the entity.

The committee also believes the present-law provisions that allow the use of a fiscal year are limited in scope and, in certain circumstances, overly burdensome. As result, under present law, many flow-thru entities have adopted calendar years. The unextended due dates of the tax returns of calendar-year flow-thru entities and individuals all fall between March 15 and April 15 of the year, causing a workload compression for tax return preparers.

In balancing these concerns, the committee provides a new set of rules under which a flow-thru entity may adopt a fiscal year without providing its owners with the opportunity for significant tax deferral.

Explanation of Provision

Estimated tax payments by flow-thru entities

The provision allows any flow-thru entity to use a fiscal year so long as the entity makes quarterly estimated tax payments at an applicable rate. These estimated tax payments are treated as estimated tax payments of the owners of the flow-thru entity for the owners' taxable year in which the fiscal year ends. Quarterly installments are due on the 15th day of the 3d, 5th, 8th, and 12th months of the taxable year. An election to make quarterly estimated tax payments must be made on or before the 15th day of the 3d month of the first taxable year of 12 months under the election. Such election generally remains in effect until first, it is revoked by owners of more than half of the equity interests of the entity, second, there is a termination of the partnership or the subchapter S election of the corporation, or third, the entity becomes part of a tiered structure of entities with different fiscal years. An entity is not allowed to re-elect, without the consent of the Secretary of the Treasury, the application of the provision until 5 years after the termination of an election. Estimated tax payments are not required for a taxable year if the amount of aggregate payments otherwise due is $5,000 or less.

In determining its estimated tax payments for a taxable year, the flow-thru entity uses an applicable rate of 34 percent, unless the flow-thru entity is a "high income average entity," in which case the applicable rate is 39.6 percent. A "high average income entity" is one where the average applicable income of the 2-percent owners for the base year was at least $250,000 or, in the case of a partnership, the applicable income for the base year was at least $10,000,000. For this purpose, a "2-percent owner" is first, in the case of a partnership, any person who owns (or is considered as owning within the meaning of the attribution rules of sec. 318) on any day during the base year more than 2 percent of the capital interest of the partnership, and second, in the case of an S corporation, any shareholder who owns (or is considered as owning within the meaning of the attribution rules of sec. 318) on any day of the taxable year more than 2 percent of the outstanding stock of the corporation or more than 2 percent of the outstanding voting stock of the corporation. The base year is the most recent prior taxable year containing 12 months.

In determining its quarterly estimated tax payments, the entity may use first, the 100-percent method, second, the 110-percent method, or third, the annualization method. Under the 100-percent method, the required quarterly installment is one-quarter of the product of the entity's applicable income for the current year and the applicable rate. Under the 110-percent method, the required quarterly installment is one-quarter of 110 percent of the product of the entity's applicable income for the base year and the applicable rate. The 110-percent method is not available if the entity's current year applicable income exceeds its base year applicable income by more than $750,000, or if the entity fails to elect such method before the due date of the first quarterly installment. Once elected, the 110-percent method must be used for the entire taxable year. Under the annualization method, the required quarterly installment is one-quarter of the product of the entity's annualized applicable income and the applicable rate. The amount of the quarterly installment may be increased or decreased to the extent prior installments were overpaid or underpaid under the annualization method. The entity may elect the annualization method for any quarter on or before the due date for such quarter and once selected, must be applied for the remainder of the taxable year.

For this purpose, "applicable income" is determined by taking the entity's items into account under subchapter K or S, as the case may be, with the following adjustments: First, charitable contributions are deducted, second, foreign taxes are deducted rather than credited, third, various limitations determined at the partner or shareholder level are disregarded, fourth, guaranteed payments to partners are not deductible; and fifth, no deduction is allowed for disproportionate deferral period applicable payments. For this purpose, "disproportionate deferral period applicable payments" means the excess (if any) of: First, the product of the deferral ratio and the aggregate applicable payments made to owners during the taxable year over second, the aggregate applicable payments made to owners during the deferral period. For this purpose, first, "applicable payments" means amounts paid by the entity that are includible in the income of the owner (except for gains on the sale of property between the entity and the owner or dividends paid by an S corporation), second, "deferral period" means the months in the period beginning with the first day of the entity's taxable year and ending on December 31, and third, "deferral ratio" means the ratio of the number of months in the deferral period to the number of months in the taxable year.

If, by reason of the election, the entity has a short taxable year (i.e., a taxable year of less than 12 months), the entity is required to make an additional estimated tax payment on or before the due date of the election. Such additional tax payment is determined and treated in a manner similar to the determination and treatment of other estimated tax payments under the provision. Any net operating loss arising in such short year is spread ratably over 3 taxable years, beginning with the short year (unless the entity is a new entity).

Underpayments of estimated tax

If a flow-thru entity has an underpayment of estimated tax under the provision, the entity is subject to an addition to tax determined by applying the underpayment rate established under section 6621 to the amount of the underpayment over the period of the underpayment. The period of the underpayment runs from the due date of the installment until the earlier of the date the entity pays the underpayment or the first April 15 more than 3 months after the close of the entity's taxable year. In addition, if, on the first April 15 more than 3 months after the close of the entity's taxable year, the entity has an underpayment of estimated tax, and the aggregate deposits made by the entity are less than the aggregate amount of allocable shares of estimated tax shown on the entity's return for the year, such shortfall is treated as a tax on the entity due on such April 15 (unless the owners had paid such shortfall). If the entity has an excess of deposits, such excess is treated as an overpayment of tax by the entity.

Credit to owners for estimated tax

The estimated tax payments paid by a flow-thru entity are treated as estimated tax payments of the owners of the entity for the owners' taxable years in which the fiscal year ends. An owner's allocable share of estimated tax paid by a flow-thru entity is determined by applying first, the ratio of (a) the owner's applicable income for the year to (b) the aggregate applicable income for all owners for the year to second, the aggregate estimated tax payments made by the entity during the taxable year. In the case of an entity that uses the annualization method, this determination is made on a quarterly basis.

An owner generally treats the estimated tax credit as being incurred ratably throughout the owner's taxable year. However, if the flow-thru entity uses the annualization method for any quarter, the estimated tax credit is deemed to flow through to the owner in the same pattern as such payments were made by the flow-thru entity. The estimated tax payments of the flow-thru entity that are allocable to an owner of the entity will be treated as distributions to the owner at the times the entity makes the estimated tax payments.

Treatment of current elections

A flow-thru entity is not allowed to make a new election under present-law section 444. An entity that currently has a section 444 election in effect may first, retain the election or second, revoke the election and receive a refund of its deposit, or third, make a new section 444 election and treat its deposit as a payment of estimated tax under the provision.

Effective Date

The provision is effective for taxable years beginning after December 31, 1996.

5. Special rule for crop insurance proceeds and disaster payments (sec. 14555 of the bill and sec. 451 of the code)

Present Law

A taxpayer engaged in a farming business generally may use the cash receipts and disbursements method of accounting ("cash method") to report taxable income. A cash method taxpayer generally recognizes income in the taxable year in which cash is received, regardless of when the economic events that give rise to such income occur. Under a special rule (sec. 451(d) of the Internal Revenue Code), in the case of insurance proceeds received as a result of destruction or damage to crops, a cash method taxpayer may elect to defer the income recognition of the proceeds until the taxable year following the year of the destruction or damage, if the taxpayer establishes that under his practice, income from such crops would have been reported in a following taxable year. For this purpose, certain payments received under the Agricultural Act of 1949, as amended, or title II of the Disaster Assistance Act of 1988, are treated as insurance proceeds received as a result of destruction or damage to crops.

Reasons for Change

The committee is aware of situations where calendar-year, cash-method farmers have received insurance proceeds or disaster assistance payments in one taxable year relating to the destruction of crops in a prior taxable year, where the income from such crop normally would have been reported in such prior year. The receipt of these payments in the subsequent year along with the recognition of the income from crops harvested or sold in that year will result in a "bunching" of income. This bunching of income may result in the loss of itemized deductions in the year of the disaster, a higher marginal income tax rate in the subsequent year, and the loss of several AGI-based deductions and exemptions in the subsequent year. The committee believes that it is appropriate to allow taxpayers to accelerate the recognition of insurance and disaster assistance payments in these and similar cases so that taxpayers may more closely replicate the tax effects that would have occurred had the destroyed crop been sold in the normal course of business.

Explanation of Provision

The provision amends the special rule of section 451(d) to allow a cash method taxpayer to elect to accelerate (or defer) the recognition of certain disaster-related payments if the taxpayer establishes that, under the taxpayer's practice, income from the crops lost in the disaster would have been reported in a prior (or the subsequent) taxable year. The provision expands the payments for which these elections are available to include disaster assistance received as a result of destruction or damage to crops caused by drought, flood, or other natural disaster, or the inability to plant crops because of such a disaster, under any Federal law (rather than only payments received under the Agricultural Act of 1949, as amended, or title II of the Disaster Assistance Act of 1988).

Thus, for example, the provision allows a calendar-year, cash-method taxpayer who has received disaster assistance payments in 1997 relating to the destruction of crops by a flood in 1996 to elect to treat such payments as received in 1996, so long as the taxpayer establishes that, under the taxpayer's practice, income from such crops would have been reported in 1996.

Effective Date

The provision is effective for payments received after December 31, 1995, as a result of destruction or damage occurring after such date.

D. Tax-Exempt Bond Provisions

Overview

Interest on State and local government bonds generally is excluded from gross income for purposes of the regular individual and corporate income taxes if the proceeds of the bonds are used to finance direct activities of these governmental units (code sec. 103).

Unlike the interest on governmental bonds, described above, interest on private activity bonds generally is taxable. A private activity bond is a bond issued by a State or local governmental unit acting as a conduit to provide financing for private parties in a manner violating either first, a private business use and payment test or second, a private loan restriction. However, interest on private activity bonds is not taxable if first, the financed activity is specified in the code and second, at least 95 percent of the net proceeds of the bond issue is used to finance the specified activity.

Issuers of State and local government bonds must satisfy numerous other requirements, including arbitrage restrictions (for all such bonds) and annual State volume limitations (for most private activity bonds) for the interest on these bonds to be excluded from gross income.

1. Repeal of $100,000 limitation on unspent proceeds under 1-year exception from rebate (sec. 14561 of the bill and sec. 148 of code)

Present Law

Subject to limited exceptions, arbitrage profits from investing bond proceeds in investments unrelated to the governmental purpose of the borrowing must be rebated to the Federal Government. No rebate is required if the gross proceeds of an issue are spent for the governmental purpose of the borrowing within 6 months after issuance.

This 6-month exception is deemed to be satisfied by issuers of governmental bonds (other than tax and revenue anticipation notes) and qualified 501(c)(3) bonds if first, all proceeds other than an amount not exceeding the lesser of 5 percent or $100,000 are so spent within 6 months and second, the remaining proceeds are spent within 1 year after the bonds are issued.

Reasons for Change

Exemption of interest paid on State and local bonds from Federal income tax provides an implicit subsidy to State and local governments for their borrowing costs. The principal Federal policy concern underlying the arbitrage rebate requirement is to discourage the earlier and larger than necessary issuance of tax-exempt bonds to take advantage of the opportunity to profit by investing funds borrowed at low-cost tax-exempt rates in higher yielding taxable investments. If at least 95 percent of the proceeds of an issue is spent within 6 months, and the remainder is spent within 1 year, opportunities for such arbitrage profit are significantly limited.

Explanation of Provision

The $100,000 limit on proceeds that may remain unspent after 6 months for certain governmental and qualified 501(c)(3) bonds otherwise exempt from the rebate requirement is deleted. Thus, if at least 95 percent of the proceeds of these bonds is spent within 6 months after their issuance, and the remainder is spent within 1 year, the 6-month exception is deemed to be satisfied.

Effective Date

The provision applies to bonds issued after the date of enactment.

2. Exception from rebate for earnings on bona fide debt service fund under construction bond rules (sec. 14562 of the bill and sec. 148 of the code)

Present Law

In general, arbitrage profits from investing bond proceeds in investments unrelated to the governmental purpose of the borrowing must be rebated to the Federal Government. An exception is provided for certain construction bond issues if the bonds are governmental bonds, qualified 501(c)(3) bonds, or exempt-facility private activity bonds for governmentally-owned property.

This exception is satisfied only if the available construction proceeds of the issue are spent at minimum specified rates during the 24-month period after the bonds are issued. The exception does not apply to bond proceeds invested after the 24-month expenditure period as part of a reasonably required reserve or replacement fund, a bona fide debt service fund, or to certain other investments (e.g., sinking funds). Issuers of these construction bonds also may elect to comply with a penalty regime in lieu of rebating arbitrage profits if they fail to satisfy the exception's spending requirements.

Reasons for Change

Bond proceeds invested in a bona fide debt service fund generally must be spent at least annually for current debt service. The short-term nature of investments in such funds results in only limited potential for generating arbitrage profits. If the spending requirements of the 24-month rebate exception are satisfied, the administrative complexity of calculating rebate on these proceeds outweighs the other Federal policy concerns addressed by the rebate requirement.

Explanation of Provision

The bill exempts earnings on bond proceeds invested in bona fide debt service funds from the arbitrage rebate requirement and the penalty requirement of the 24-month exception if the spending requirements of that exception are otherwise satisfied.

Effective Date

The provision applies to bonds issued after the date of enactment.

3. Repeal of debt service-based limitation on investment in certain nonpurpose investments (sec. 14563 of the bill and sec. 148 of the code)

Present Law

Issuers of all tax-exempt bonds generally are subject to two sets of restrictions on investment of their bond proceeds to limit arbitrage profits. The first set requires that tax-exempt bond proceeds be invested at a yield that is not materially higher (generally defined as 0.125 percentage points) than the bond yield ("yield restrictions"). Exceptions are provided to this restriction for investments during any of several "temporary periods" pending use of the proceeds and, throughout the term of the issue, for proceeds invested as part of a reasonably required reserve or replacement fund or a "minor" portion of the issue proceeds.

Except for temporary periods and amounts held pending use to pay current debt service, present law also limits the amount of the proceeds of private activity bonds (other than qualified 501(c)(3) bonds) that may be invested at materially higher yields at any time during a bond year to 150 percent of the debt service for that bond year. This restriction affects primarily investments in reasonably required reserve or replacement funds. Present law further restricts the amount of proceeds from the sale of bonds that may be invested in these reserve funds to 10 percent of such proceeds.

The second set of restrictions requires generally that all arbitrage profits earned on investments unrelated to the governmental purpose of the borrowing be rebated to the Federal Government ("arbitrage rebate"). Arbitrage profits include all earnings (in excess of bond yield) derived from the investment of bond proceeds (and subsequent earnings on any such earnings).

Reasons for Change

The 150-percent of debt service limit was enacted before enactment of the arbitrage rebate requirement and the ten-percent limit on the size of reasonably required reserve or replacement funds. It was intended to eliminate arbitrage-motivated activities available from investment of such reserve funds. Provided that comprehensive yield restriction and arbitrage rebate requirements and the present-law overall size limit on reserve funds are maintained, the 150-percent of debt service yield restriction limit is duplicative.

Explanation of Provision

The bill repeals the 150-percent of debt service yield restriction.

Effective Date

The provision applies to bonds issued after the date of enactment.

4. Repeal of expired provisions (sec. 14564 of the bill and sec. 148 of the code)

Present Law

Present law includes two special exceptions to the arbitrage rebate and pooled financing temporary period rules for certain qualified student loan bonds. These exceptions applied only to bonds issued before January 1, 1989.

Explanation of Provision

These special exceptions are deleted as "deadwood."

Effective Date

The provision applies to bonds issued after the date of enactment. It has no effect on bonds issued prior to the date of enactment.

E. Insurance Provisions

1. Treatment of certain insurance contracts on retired lives (sec. 14571 of the bill and sec. 817(d) of the code)

Present Law

Life insurance companies are allowed a deduction for any net increase in reserves and are required to include in income any net decrease in reserves. The reserve of a life insurance company for any contract is the greater of the net surrender value of the contract or the reserve determined under Federally prescribed rules. In no event, however, may the amount of the reserve for tax purposes for any contract at any time exceed the amount of the reserve for annual statement purposes.

Special rules are provided in the case of a variable contract. Under these rules, the reserve for a variable contract is adjusted by first, subtracting any amount that has been added to the reserve by reason of appreciation in the value of assets underlying such contract, and second, adding any amount that has been subtracted from the reserve by reason of depreciation in the value of assets underlying such contract. In addition, the basis of each asset underlying a variable contract is adjusted for appreciation or depreciation to the extent the reserve is adjusted.

A variable contract generally is defined as any annuity or life insurance contract first, that provides for the allocation of all or part of the amounts received under the contract to an account that is segregated from the general asset accounts of the company, and second, under which, in the case of an annuity contract, the amounts paid in, or the amounts paid out, reflect the investment return and the market value of the segregated asset account, or, in the case of a life insurance contract, the amount of the death benefit (or the period of coverage) is adjusted on the basis of the investment return and the market value of the segregated asset account. A pension plan contract that is not a life, accident, or health, property, casualty, or liability insurance contract is treated as an annuity contract for purposes of this definition.

Reasons for Change

The committee believes that certain contracts which provide insurance on retired lives should be treated as variable contracts in order to simplify the treatment of such contracts and to provide a more accurate measure of the income of life insurance companies with respect to such contracts.

Explanation of Provision

The bill provides that a variable contract is to include a contract that provides for the funding of group term life or group accident and health insurance on retired lives if: First, the contract provides for the allocation of all or part of the amounts received under the contract to an account that is segregated from the general asset account of the company; and second, the amounts paid in, or the amounts paid out, under the contract reflect the investment return and the market value of the segregated asset account underlying the contract.

Thus, the reserve for such a contract is to be adjusted by first, subtracting any amount that has been added to the reserve by reason of appreciation in the value of assets underlying such contract, and second, adding any amount that has been subtracted from the reserve by reason of depreciation in the value of assets underlying such contract. In addition, the basis of each asset underlying the contract is to be adjusted for appreciation or depreciation to the extent that the reserve is adjusted.

Effective Date

The provision applies to taxable years beginning after December 31, 1995.

2. Treatment of modified guaranteed contracts (sec. 14572 of the bill and new sec. 817A of the code)

Present Law

Life insurance companies are allowed a deduction for any net increase in reserves and are required to include in income any net decrease in reserves. The reserve of a life insurance company for any contract is the greater of the net surrender value of the contract or the reserve determined under Federally prescribed rules. The net surrender value of a contract is the cash surrender value reduced by any surrender penalty, except that any market value adjustment required on surrender is not taken into account. In no event, however, may the amount of the reserve for tax purposes for any contract at any time exceed the amount of the reserve for annual statement purposes.

In general, assets held for investment are treated as capital assets. Any gain or loss from the sale or exchange of a capital asset is treated as a capital gain or loss and is taken into account for the taxable year in which the asset is sold or exchanged.

Reasons for Change

Life insurance companies have recently begun issuing annuity contracts, life insurance contracts, and pension plan contracts that provide for a guaranteed interest rate for a specified period of time and a market value adjustment in the event that the owner of the contract surrenders the contract for cash prior to the end of the guaranteed interest period. These contracts are commonly referred to as modified guaranteed contracts.

If the premium or other consideration received under a modified guaranteed contract is allocated to an account that is segregated from the general asset accounts of the life insurance company, then the reserve for the contract and the assets in the segregated account generally are required to be taken into account at market value for annual statement purposes. For Federal income tax purposes, the reserve for a modified guaranteed contract may reflect the market value adjustment, while the market fluctuations in the assets underlying the contract are not taken into account unless the assets are disposed of.

The committee considers it appropriate to conform the Federal income tax treatment of modified guaranteed contracts with the annual statement treatment of such contacts in order to simplify the accounting for such contracts and to provide a more accurate measure of the income of life insurance companies with respect to such contracts.

Explanation of Provision

The bill generally applies a mark-to-market regime to assets held as part of a segregated account under a modified guaranteed contract issued by a life insurance company. Gain or loss with respect to such assets held as of the close of any taxable year are taken into account for that year (even though the assets have not been sold or exchanged),[150] and are treated as ordinary. If gain or loss is taken into account by reason of the mark-to-market requirement, then the amount of gain or loss subsequently realized as a result of sale, exchange, or other disposition of the asset, or as a result of the application of the mark-to-market requirement is appropriately adjusted to reflect such gain or loss. In addition, the reserve for a modified guaranteed contract is determined by taking into account the market value adjustment required on surrender of the contract.

A modified guaranteed contract is defined as any life insurance contract, annuity contract or pension plan contract[151] that is not

[150] The wash sale rules of section 1091 of the code are not to apply to any loss that is required to be taken into account solely by reason of the mark-to-market requirement.

[151] The provision applies only to a pension plan contract that is not a life, accident or health, property, casualty, or liability contract.

a variable contract (within the meaning of code section 817), and that satisfies the following requirements. All or a part of the amounts received under the contract must be allocated to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company and is valued from time to time by reference to market values. The reserves for the contract must be valued at market for annual statement purposes. Further, a modified guaranteed contract includes only a contract that provides either for a net surrender value or for a policyholder's fund (within the meaning of section 807(e)(1)). If only a portion of the contract is not described in section 817, that portion is treated as a separate contract for purposes of the provision.

The Treasury Department is authorized to issue regulations that provide for the application of the mark-to-market requirement at times other than the close of a taxable year or the last business day of a taxable year. The Treasury Department is also authorized to issue such regulations as may be necessary or appropriate to carry out the purposes of the provision and to provide for the treatment of modified guaranteed contracts under sections 72, 7702, and 7702A. In addition, the Treasury Department is authorized to determine the interest rates applicable under sections 807(c)(3), 807(d)(2)(B) and 812 with respect to modified guaranteed contracts annually, calculating such rates as appropriate for modified guaranteed contracts. For example, it may be appropriate to take into account the yield on the assets underlying the contract in determining such rates. The Treasury Department is also authorized, to the extent appropriate for such a contract, to modify or waive section 811(d).

The Treasury Department is also authorized to provide rules limiting the ordinary treatment provided under the provision to gain or loss on those assets properly taken into account in calculating the reserve for Federal tax purposes (and necessary to support such reserves) for modified guaranteed contracts, and to provide rules for limiting such treatment with respect to other assets (such as assets representing surplus of the company). Particular concern has been expressed about characterization of gain or loss as ordinary under the provision in transactions that would otherwise either first, have to meet the requirements of the hedging exception to the straddle rules to receive this treatment, or second, be treated as capital transactions under present law. It is intended that the mark-to-market treatment apply to all assets held as part of a segregated account established under the provision, even though ordinary treatment may not apply (pursuant to Treasury regulatory authority) to assets held as part of the segregated account that are not necessary to support the reserve for modified guaranteed contracts.

The bill authorizes the Treasury Department to prescribe regulations that provide for the treatment of assets transferred to or from a segregated account. This regulatory authority is provided because of concern that taxpayers may exercise selective ordinary loss (or income or gain) recognition by virtue of the ordinary treatment under the provision. One example of selective ordinary loss recognition could arise if assets are always marked to market when transferred out of the segregated account. For example, if at the beginning of the taxable year an asset in the segregated account is worth $1,000, but declines to $900 in July, the taxpayer might choose to recognize $100 of ordinary loss while continuing to own the asset, simply by transferring it out of the segregated account in July and replacing $1,000 of cash (for example) in the segregated account.

It is intended that the regulations relating to asset transfers will forestall opportunities for selective recognition of ordinary items. Prior to the issuance of these regulations, the following rules shall apply.

If an asset is transferred to a segregated account, gain or loss attributable to the period during which the asset was not in the segregated account is taken into account when the asset is actually sold, and retains the character (as ordinary or capital) properly attributable to that period. Appropriate adjustments are made to the basis of the asset to reflect gain or loss attributable to that period.

If an asset is transferred out of a segregated account, the transfer is deemed to occur on the last business day of the taxable year and gain or loss with respect to the transferred asset is taken into account as of that day. Loss with respect to such transferred asset is treated as ordinary to the extent of the lesser of first, the loss (if any) that would have been recognized if the asset had been sold for its fair market value on the last business day of the taxable year (or the date the asset was actually sold by the taxpayer, if earlier) or second, the loss (if any) that would have been recognized if the asset had been sold for its fair market value on the date of the transfer. A similar rule applies for gains. Proper adjustment is made in the amount of any gain or loss subsequently realized to reflect gain or loss under the provision.

For example, assume that a capital asset in the segregated account that is worth $1,000 at the beginning of the year is transferred out of the segregated account in July at a value of $900, is retained by the company and is worth $950 on the last business day of the taxable year. A $50 ordinary loss is taken into account with respect to the asset for the taxable year (the difference between $1,000 and $950). The asset is not marked to market in any subsequent year under the provision, provided that it is not transferred back to the segregated account.

As an additional example, assume that a capital asset in the segregated account that is worth $1,000 at the beginning of the year is transferred out of the segregated accounted in July at a value of $900, is retained by the company and continues to decline in value to $850 on the last business day of the taxable year. A $100 ordinary loss ($1,000 less $900) and a $50 capital loss ($900 less $850) is taken into account with respect to the asset for the taxable year.

Effective Date

The provision applies to taxable years beginning after December 31, 1995. A taxpayer that is required to first, change its calculation of reserves to take into account market value adjustments and second, mark to market its segregated assets in order to comply with the requirements of the provision is treated as having initiated changes in method of accounting and as having received the consent of the Treasury Department to make such changes.

The section 481(a) adjustments required by reason of the changes in method of accounting are to be combined and taken into account as a single net adjustment for the taxpayer's first taxable year beginning after December 31, 1995.

3. Minimum tax treatment of certain property and casualty insurance companies (sec. 14573 of the bill and sec. 56(g) of the code)

Present Law

Present law provides that certain property and casualty insurance companies may elect to be taxed only on taxable investment income for regular tax purposes (sec. 831(b)). Eligible property and casualty insurance companies are those whose net written premiums (or if greater, direct written premiums) for the taxable year exceed $350,000 but do not exceed $1,200,000.

Under present law, all corporations including insurance companies are subject to an alternative minimum tax. Alternative minimum taxable income is increased by 75 percent of the excess of adjusted current earnings over alternative minimum taxable income (determined without regard to this adjustment and without regard to net operating losses).

Reasons for Change

The committee believes that property and casualty companies small enough to be eligible to simplify their regular tax computation by electing to be taxed only on taxable investment income should be accorded comparable simplicity in the calculation of their alternative minimum tax. Under present law, the simplicity under the regular tax is nullified because electing companies must calculate underwriting income for tax purposes under the alternative minimum tax. The provision thus simplifies the entire Federal income tax calculation for a limited group of small taxpayers whom Congress has previously determined merit a simpler tax calculation.

Explanation of Provision

The bill provides that a property and casualty insurance company that elects for regular tax purposes to be taxed only on taxable investment income determines its adjusted current earnings under the alternative minimum tax without regard to any amount not taken into account in determining its gross investment income under section 834(b). Thus, adjusted current earnings of an electing company is determined without regard to underwriting income (or underwriting expense, as provided in sec. 56(g)(4)(B)(i)(II)).

Effective Date

The provision is effective for taxable years beginning after December 31, 1995.

F. Other Provisions

1. Closing of partnership taxable year with respect to deceased partner, etc. (sec. 14581 of the bill and sec. 706(c) of the code)

Present Law

The partnership taxable year closes with respect to a partner whose entire interest is sold, exchanged, or liquidated. Such year, however, generally does not close upon the death of a partner. Thus, a decedent's entire share of items of income, gain, loss, deduction and credit for the partnership year in which death occurs is taxed to the estate or successor in interest rather than to the decedent on his or her final income tax return. See *Estate of Hesse* v. *Commissioner,* 74 T.C. 1307, 1311 (1980).

Reasons for Change

The rule leaving open the partnership taxable year with respect to a deceased partner was adopted in 1954 to prevent the bunching of income that could occur with respect to a partnership reporting on a fiscal year other than the calendar year. Without this rule, as many as 23 months of income might have been reported on the partner's final return. Legislative changes occurring since 1954 have required most partnerships to adopt a calendar year, reducing the possibility of bunching. Consequently, income and deductions are better matched if the partnership taxable year closes upon a partner's death and partnership items are reported on the decedent's last return.

Present law closes the partnership taxable year with respect to a deceased partner only if the partner's entire interest is sold or exchanged pursuant to an agreement existing at the time of death. By closing the taxable year automatically upon death, the provision reduces the need for such agreements.

Explanation of Provision

The bill provides that the taxable year of a partnership closes with respect to a partner whose entire interest in the partnership terminates, whether by death, liquidation or otherwise. The provision is not intended to change present law with respect to the effect upon the partnership taxable year of a transfer of a partnership interest by a debtor to the debtor's estate (under Chapters 7 or 11 of Title 11, relating to bankruptcy).

Effective Date

The provision applies to partnership taxable years beginning after December 31, 1995.

2. Credit for Social Security taxes paid with respect to employee cash tips (sec. 14582 of the bill and sec. 45B of the code)

Present Law

Under present law, all employee tip income is treated as employer-provided wages for purposes of the Federal Insurance Contributions Act ("FICA") (sec. 3121(q)). Employees are required to report to the employer the amount of tips received (sec. 6053(a)).

The Omnibus Budget Reconciliation Act of 1993 ("OBRA 1993") provided a business tax credit with respect to certain employer FICA taxes paid with respect to tips that are treated as paid by the employer. In determining the credit, tips are taken into account only if they are received from customers in connection with the provision of food or beverages for consumption on the premises of an establishment with respect to which the tipping of employees serving food or beverages by customers is customary. In addition, the credit only applies with respect to tips that exceed the amount by which the wages paid by the employer (excluding tips) are less than the amount of the minimum wage.

OBRA 1993 provides that the FICA tip credit is effective for taxes paid after December 31, 1993.

Temporary Treasury regulations provide that the tax credit is available only with respect to tips reported by the employee. The temporary regulations also provide that the credit is effective for FICA taxes paid by an employer after December 31, 1993, with respect to tips received for services performed after December 31, 1993.

Reasons for Change

The committee believes it appropriate to clarify the effective date and scope of the credit for FICA taxes paid on employer cash tips.

Explanation of Provision

The provision clarifies the credit with respect to employer FICA taxes paid on tips by providing that the credit is first, available whether or not the employee reported the tips on which the employer FICA taxes were paid pursuant to section 6053(a), and second, effective with respect to taxes paid after December 31, 1993, regardless of when the services with respect to which the tips are received were performed.

Effective Date

The provision is effective as if included in OBRA 1993.

3. Due date for first quarter estimated tax payments by private foundations (sec. 14583 of the bill and sec. 6655(g)(3) of the code)

Present Law

Under section 4940, tax-exempt private foundations generally are required to pay an excise tax equal to 2 percent of their net investment income for the taxable year. Under section 6655(g)(3), private foundations are required to pay estimated tax with respect to their excise tax liability under section 4940 (as well as any unrelated business income tax [UBIT] liability under section 511).[152] Section

[152] Generally, the amount of the first quarter payment must be at least 25 percent of the lesser of first, the preceding year's tax liability, as shown on the foundation's form 990–PF, or second, 95 percent of the foundation's current-year tax liability.

6655(c) provides that this estimated tax is payable in quarterly installments and that, for calendar-year foundations, the first quarterly installment is due on April 15. Under section 6655(i), foundations with taxable years other than the calendar year must make their quarterly estimated tax payments no later than the dates in their fiscal years that correspond to the dates applicable to calendar-year foundations.

Reasons for Change

Because a private foundation's estimated tax payments are determined, in part, by reference to the foundation's tax liability for the preceding year, the due date for a foundation's first-quarter estimated tax payment should be the same date for filing the foundation's annual return (form 990–PF) for the preceding year.

Explanation of Provision

The bill amends section 6655(g)(3) to provide that a calendar-year foundation's first-quarter estimated tax payment is due on May 15 (which is the same day that its annual return, form 990–PF, for the preceding year is due). As a result of the operation of present-law section 6655(i), fiscal-year foundations will be required to make their first-quarter estimated tax payment no later than the 15th day of the 5th month of their taxable year.

Effective Date

The provision applies to taxable years beginning after 1995.

4. Treatment of dues paid to agricultural or horticultural organizations (sec. 14584 of the bill and sec. 512 of the code)

Present Law

Tax-exempt organizations generally are subject to the unrelated business income tax [UBIT] on income derived from a trade or business regularly carried on that is not substantially related to the performance of the organization's tax-exempt functions (secs. 511–514). Dues payments made to a membership organization generally are not subject to the UBIT. However, several courts have held that, with respect to postal labor organizations, dues payments were subject to the UBIT when received from individuals who were not postal workers but who became "associate" members for the purpose of obtaining health insurance available to members of the organization. See *National League of Postmasters of the United States* v. *Commissioner, No.* 8032–93, T.C. Memo (May 11, 1995); *American Postal Workers Union, AFL–CIO* v. *United States,* 925 F.2d 480 (D.C. Cir. 1991); *National Association of Postal Supervisors* v. *United States,* 944 F.2d 859 (Fed. Cir. 1991).

In Rev. Proc. 95–21 (issued March 23, 1995), the IRS indicated its position regarding when associate member dues payments received by an organization described in section 501(c)(5) will be treated as subject to the UBIT. The IRS indicated that dues payments from associate members will not be treated as subject to UBIT unless, for the relevant period, "the associate member category has been formed or availed of for the principal purpose of producing unrelated business income." Thus, under Rev. Proc. 95–21, the focus of the inquiry is upon the organization's purposes in forming the associate member category (and whether the purposes of that category of membership are substantially related to the organization's exempt purposes other than through the production of income), rather than upon the motive of the individuals who join as associate members.

Reasons for Change

In order to reduce uncertainty and legal disputes involving the UBIT treatment of certain associate member dues, the committee believes that it is appropriate to provide a special rule exempting from the UBIT annual dues not exceeding $100 paid to a tax-exempt agricultural or horticultural organization.

Explanation of Provision

Under the bill, if an agricultural or horticultural organization described in section 501(c)(5) requires annual dues not exceeding $100 to be paid in order to be a member of such organization, then in no event will any portion of such dues be subject to the UBIT by reason of any benefits or privileges to which members of such organization are entitled. For taxable years beginning after 1995, the $100 amount will be indexed for inflation. The term "dues" is defined as "any payment required to be made in order to be recognized by the organization as a member of the organization."[153]

Effective Date

The provision applies to taxable years beginning after December 31, 1994.

SUBTITLE F. ESTATE, GIFTS, AND TRUSTS

A. Income Tax Provisions

1. Certain revocable trusts treated as part of estate (sec. 14601 of the bill and secs. 646 and 2652(b)(1) of the code)

Present Law

Both estates and revocable intervivos trusts can function to wind up the affairs of a decedent and distribute assets to heirs. In the case of revocable intervivos trusts, the grantor transfers property into a trust which is revocable during his or her lifetime. Upon the grantor's death, the power to revoke ceases and the trustee then performs the winding up functions typically performed by the executor of an estate. While both estates and revocable trusts perform essentially the same function after the testator or grantor's death, there are a number of ways in which an estate and a revocable trust operate in different ways. First, there can be only one estate per decedent while there can be more than one revocable trust. Second, estates are in existence only for a reasonable period of administration; revocable trusts can perform the same winding

[153] No inference is intended regarding the UBIT treatment of any dues payment not governed by the provision.

up functions as an estate, but may continue in existence thereafter as testamentary trusts.

Numerous differences presently exist between the income tax treatment of estates and revocable trusts, including: First, estates are allowed a charitable deduction for amounts permanently set aside for charitable purposes while post death revocable trusts are allowed a charitable deduction only for amounts paid to charities; second, the active participation requirement the passive loss rules under section 469 is waived in the case of estates (but not revocable trusts) for 2 years after the owner's death; third, an estate is a qualified shareholder of an S corporation, while a revocable trust may not be; and fourth, estates can qualify for section 194 amortization of reforestation expenditures, while trusts do not.

Reasons for Change

The use of revocable trusts may offer certain nontax advantages for estate planning as compared to a traditional estate plan. There are several differences, however, between the Federal tax treatment of revocable trusts and an estate. These differences may discourage individuals from utilizing revocable trusts for estate planning where they might otherwise be appropriate or efficient. Accordingly, in an effort to minimize these tax differences, the committee believes it is appropriate to allow an election to treat a revocable trust as part of the decedent's estate during a reasonable period of administration.

Explanation of Provision

The bill provides an irrevocable election to treat a qualified revocable trust as part of the decedent's estate for Federal income tax purposes. This elective treatment is effective from the date of the decedent's death until 2 years after his or her death (if no estate tax return is required) or 6 months after the final determination of estate tax liability (if an estate tax return is required). The election must be made by both the executor of the decedent's estate and the trustee of the revocable trust no later than the time required for filing the income tax return of the estate for its first taxable year, taking into account any extensions. A conforming change is made to section 2652(b) for generation-skipping transfer tax purposes.

For this purpose, a qualified revocable trust is any trust all of which was treated under section 676 as owned by the decedent with respect to whom the election is being made.

Effective Date

The provision applies to decedents dying after the date of enactment.

2. Distributions during first 65 days of taxable year of estate (sec. 14602 of the bill and sec. 663(b) of the code)

Present Law

In general, trusts and estates are treated as conduits for Federal income tax purposes; income received by a trust or estate that is distributed to a beneficiary in the trust or estate's taxable year "ending with or within" the taxable year of the beneficiary is taxable to the beneficiary in that year; income that is retained by the trust or estate is initially taxable to the trust or estate. In the case of distributions of previously accumulated income by trusts (but not estates), there may be additional tax under the so-called throwback rules if the beneficiary to whom the distributions were made has marginal rates higher than those of the trust. Under the "65-day rule," a trust may elect to treat distributions paid within 65 days after the close of its taxable year as paid on the last day of its taxable year. The 65-day rule is not applicable to estates.

Reasons for Change

In order to minimize the tax differences between estates and revocable trusts, the committee believes that the 65-day rule should be allowed to estates as well as to trusts.

Explanation of Provision

The bill extends application of the 65-day rule to distributions by estates. Thus, an executor can elect to treat distributions paid within 65 days after the close of the estate's taxable year as having been paid on the last day of such taxable year.

Effective Date

The provision applies to taxable years beginning after the date of enactment.

3. Separate share rules available to estates (sec. 14603 of the bill and sec. 663(c) of the code)

Present Law

Trusts with more than one beneficiary must use the "separate share" rule in order to provide different tax treatment of distributions to different beneficiaries to reflect the income earned by different shares of the trust's corpus.[154] Treasury regulations provide that "[t]he application of the separate share rule * * * will generally depend upon whether distributions of the trust are to be made in substantially the same manner as if separate trusts had been created. * * * Separate share treatment will not be applied to a trust or portion of a trust subject to a power to distribute, apportion, or accumulate income or distribute corpus to or for the use of one or more beneficiaries within a group or class of beneficiaries, unless the payment of income, accumulated income, or corpus of a share of one beneficiary cannot affect the proportionate share of income, accumulated income, or corpus of any shares of the other beneficiaries, or unless substantially proper adjustment must thereafter be made under the governing instrument so that substantially separate and independent shares exist." (Treas. Reg. sec. 1.663(c)–3). The separate share rule presently does not apply to estates.

[154] Application of the separate share rule is not elective; it is mandatory if there are separate shares in the trust.

Reasons for Change

The committee understands that estates typically do not have separate shares. Nonetheless, where separate shares do exist in an estate, the inapplicability of the separate share rule to estates may result in one beneficiary or class of beneficiaries being taxed on income payable to, or accruing to, a separate beneficiary or class of beneficiaries. Accordingly, the committee believes that a more equitable taxation of an estate and its beneficiaries would be achieved with the application of the separate share rule to an estate where, under the provisions of the decedent's will or applicable local law, there are separate shares in the estate.

Explanation of Provision

The bill extends the application of the separate share rule to estates. There are separate shares in an estate when the governing instrument of the estate (e.g., the will and applicable local law) creates separate economic interests in one beneficiary or class of beneficiaries such that the economic interests of those beneficiaries (e.g., rights to income or gains from specified items of property) are not affected by economic interests accruing to another separate beneficiary or class of beneficiaries. For example, a separate share in an estate would exist where the decedent's will provides that all of the shares of a closely-held corporation are devised to one beneficiary and that any dividends paid to the estate by that corporation should be paid only to that beneficiary and any such dividends would not affect any other amounts which that beneficiary would receive under the will. As in the case of trusts, the application of the separate share rule is mandatory where separate shares exist.

Effective Date

The provision applies to decedents dying after the date of enactment.

4. Executor of estate and beneficiaries treated as related persons for disallowance of losses, etc. (sec. 14604 of the bill and secs. 267(b) and 1239(b) of the code)

Present Law

Section 267 disallows a deduction for any loss on the sale of an asset to a person related to the taxpayer. For the purposes of section 267, the following parties are related persons: First, a trust and the trust's grantor, second, two trusts with the same grantor, third, a trust and a beneficiary of the trust, fourth, a trust and a beneficiary of another trust, if both trusts have the same grantor, and fifth, a trust and a corporation the stock of which is more than 50 percent owned by the trust or the trust's grantor.

Section 1239 disallows capital gain treatment on the sale of depreciable property to a related person. For purposes of section 1239, a trust and any beneficiary of the trust are treated as related persons, unless the beneficiary's interest is a remote contingent interest.

Neither section 267 or section 1239 presently treat an estate and a beneficiary of the estate as related persons.

Reasons for Change

The committee believes that the disallowance rules under sections 267 and 1239 with respect to transactions between related parties should apply to an estate and a beneficiary of that estate for the same reasons that such rules apply to a trust and a beneficiary of that trust.

Explanation of Provision

Under the bill, an estate and a beneficiary of that estate are treated as related persons for purposes of sections 267 and 1239, except in the case of a sale or exchange in satisfaction of a pecuniary bequest.

Effective Date

The provision applies to taxable years beginning after the date of enactment.

5. Limitation on taxable year of estates (sec. 14605 of the bill and sec. 645 of the code)

Present Law

The taxability of distributions from a trust or estate is based on the amount of income received by the trust or estate in the trust or estate's taxable year "ending with or within" the taxable year of the beneficiary (typically a calendar year). Trusts are required to use a calendar year and, consequently, income of a trust that is distributed to a calendar-year beneficiary in the year earned is taxed to the beneficiary in the year earned. Estates, on the other hand, are allowed to use any fiscal year. Consequently, in the case of estates, the taxation of distributions to a calendar-year beneficiary in up to the last 11 months of the calendar year can be deferred until the next taxable year depending upon the fiscal year selected.

Reasons for Change

The committee believes that allowing an estate to use a taxable year significantly different than the calendar year may result in an improper deferral of income by the beneficiaries of the estate. Thus, the committee believes that the choice of taxable years allowable to an estate should be appropriately limited.

Explanation of Provision

The bill limits the taxable year of an estate to a year ending on October 31, November 30, or December 31.[155] Thus, the maximum deferral allowable to a calendar-year beneficiary is with respect to distributions made in the last 2 months of the calendar year.

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[155] If an election is made to treat a revocable trust as part of the estate under section 14601 of the bill, such trust would switch to the taxable year of the estate during the period that the election was effective.

Effective Date

The provision applies to decedents dying after the date of enactment.

6. Repeal of certain throwback rules applicable to domestic trusts (sec. 14606 of the bill and secs. 644(e) and 665)

Present Law

A nongrantor trust is treated as a separate taxpayer for Federal income tax purposes. Such a trust generally is treated as a conduit with respect to amounts distributed currently[156] and taxed with respect to any income which is accumulated in the trust rather than distributed. A separate graduated tax rate structure applies to trusts which historically has permitted accumulated trust income to be taxed at lower rates than the rates applicable to trust beneficiaries. This benefit often was compounded through the creation of multiple trusts.

The Internal Revenue Code has several rules intended to limit the benefit that would otherwise occur from using the lower rates applicable to one or more trusts. Under the so-called throwback rules, the distribution of previously accumulated trust income to a beneficiary will be subject to tax (in addition to any tax paid by the trust on that income) where the beneficiary's average top marginal rate in the previous 5 years is higher than those of the trust.

Under section 643(f), two or more trusts are treated as one trust if first, the trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and second, a principal purpose for the existence of the trusts is to avoid Federal income tax. For trusts that were irrevocable as of March 1, 1984, section 643(f) applies only to contributions to corpus after that date.

Under section 644, if property is sold within 2 years of its contribution to a trust, the gain that would have been recognized had the contributor sold the property is taxed at the contributor's marginal tax rates. In effect, section 644 treats such gains as if the contributor had realized the gain and then transferred the net after-tax proceeds from the sale to the trust as corpus.

Reasons for Change

The throwback rules and section 644 are intended to eliminate the potential tax reduction arising from taxation at the trust level, rather than the beneficiary or contributor level. When those provisions were enacted, a taxpayer could reduce his or her overall tax liability substantially by transferring property to one or more trusts, so that any income from the property would be taxed at lower income tax rates. In the Tax Reform Act of 1984, Congress curtailed the tax avoidance use of multiple trusts. Moreover, in the Tax Reform Act of 1986, Congress provided a new rate schedule for estates and trusts under which the maximum tax benefit of the graduated rate structure applicable to estates or trusts was re-

[156] The conduit treatment is achieved by allowing the trust a deduction for amounts distributed to beneficiaries during the taxable year to the extent of distributable net income and by including such distributions in the beneficiaries' income.

duced substantially to slightly more than $600 per year for a trust or estate. (Because of indexing of the rate brackets, that benefit has increased to $845 per year per trust or estate.) The committee has determined that the insignificant potential tax reduction available through the transfer of property to trust no longer warrants the complexity of the throwback rules and section 644.

Explanation of Provision

The bill exempts from the throwback rules amounts distributed by a domestic trust after December 31, 1995. The provision also provides that precontribution gain on property sold by a domestic trust no longer is subject to section 644 (i.e., taxed at the contributor's marginal tax rates).

Effective Date

The provision with respect to the throwback rules is effective for distributions made in taxable years beginning after December 31, 1995. The modification to section 644 applies to sales or exchanges after December 31, 1995.

7. Treatment of funeral trusts (sec. 14607 of the bill and sec. 684 of the code)

Present Law

A pre-need funeral trust is an arrangement where an individual purchases funeral or burial services or merchandise from a funeral home or cemetery in advance of the individual's death. The individual enters into a contract with the provider of such services or merchandise whereby the individual selects the services or merchandise to be provided upon his or her death, and agrees to pay for them in advance of his or her death. Such amounts (or a portion thereof) are held in trust during the individual's lifetime and are paid to the seller upon the individual's death.

Under present law, pre-need funeral trusts generally are treated as grantor trusts, and the annual income earned by such trusts is taxed to the purchaser/grantor of the trust.[157] Amounts received from the trust by the seller are treated as payments for services and merchandise and are includible in the gross income of the seller.

Reasons for Change

To the extent that pre-need funeral trusts are treated as grantor trusts under present law, numerous individual taxpayers are required to account for the earnings of such trusts on their tax returns, even though the earnings with respect to any one taxpayer may be small. The committee believes that this recordkeeping burden on individuals could be eased, and that compliance with the tax laws would be improved, if such trusts instead were taxed at the entity level, with one simplified annual return filed by the trustee reporting the aggregate income from all such trusts administered by the trustee.

[157] Rev. Rul. 87–127, 1987–2 C.B. 156.

Explanation of Provision

The bill allows the trustee of a pre-need funeral trust to elect to have the trust essentially be treated as a nongrantor trust, to the extent the trust would otherwise be treated as a grantor trust. For purposes of this provision, if funds of more than one purchaser are commingled in, or transferred to, a single master trust (or other similar arrangement), each purchaser's share of the trust is treated as a separate trust, and each of the following requirements is applied separately with respect to each purchaser's trust. A qualified funeral trust is defined as one which meets the following requirements: First, the trust arises as the result of a contract between a person engaged in the trade or business of providing funeral or burial services or merchandise and one or more individuals (i.e., the trust beneficiaries) to have such services or property provided upon such individuals' death; second, the only beneficiaries of the trust are individuals who have entered into contracts to have such services or merchandise provided upon their death; third, the only contributions to the trust are contributions by or for the benefit of the trust beneficiaries; fourth, the trust's only purpose is to hold and invest funds that will be used to make payments for funeral or burial services or merchandise for the trust beneficiaries; and fifth, the trust has not accepted contributions in excess of $5,000 by or for the benefit of any individual. For this purpose, "contributions" include all amounts transferred to the trust, regardless of how denominated in the contract. Contributions do not, however, include income or gain earned with respect to property in the trust. For purposes of applying the $5,000 limit, if a purchaser has more than one contract with a single trustee (or related trustees), all such trusts are treated as one trust. Similarly, if the Secretary of Treasury determines that a purchaser has entered into separate contracts with unrelated trustees to avoid the $5,000 limit described above, the Secretary may require that such trusts be treated as one trust. The $5,000 limit is indexed for inflation after 1995.

The trustee's election to have this provision apply to a qualified funeral trust is to be made separately with respect to each purchaser's trust. It is anticipated that the Department of Treasury will issue prompt guidance with respect to the simplified reporting requirements so that if the election is made, a single annual trust return may be filed by the trustee, separately listing the amount of income earned with respect to each purchaser. The amount of tax paid with respect to each purchaser's trust is determined in accordance with the income tax rate schedule generally applicable to estates and trusts (code sec. 1(e)), but no deduction is allowed under section 642(b). The tax on the annual earnings of the trust is payable by the trustee.

As under present law, amounts received from the trust by the seller are treated as payments for services and merchandise and are includible in the gross income of the seller. No gain or loss is recognized to the beneficiary of the trust for payments from the trust to the beneficiary upon cancellation of the contract, and the beneficiary takes a carryover basis in any assets received from the trust upon cancellation.

Effective Date

The provision is effective for taxable years beginning after the date of enactment.

B. Estate and Gift Tax Provisions

1. Clarification of waiver of certain rights of recovery (sec. 14611 of the bill and secs. 2207A and 2207B of the code)

Present Law

For estate and gift tax purposes, a marital deduction is allowed for qualified terminable interest property (QTIP). Such property generally is included in the surviving spouse's gross estate upon his or her death. The surviving spouse's estate is entitled to recover the portion of the estate tax attributable to inclusion of QTIP from the person receiving the property, unless the spouse directs otherwise by will (sec. 2207A). For this purpose, a will provision specifying that all taxes shall be paid by the estate is sufficient to waive the right of recovery.

A decedent's gross estate includes the value of previously transferred property in which the decedent retains enjoyment or the right to income (sec. 2036). The estate is entitled to recover from the person receiving the property a portion of the estate tax attributable to the inclusion (sec. 2207B). This right may be waived only by a provision in the will (or revocable trust) specifically referring to section 2207B.

Reasons for Change

It is understood that persons utilizing standard testamentary language often inadvertently waive the right of recovery with respect to QTIP. Similarly, persons waiving a right to contribution are unlikely to refer to the code section granting the right. Accordingly, allowing the right of recovery (or right of contribution) to be waived only by specific reference should simplify the drafting of wills by better conforming with the testator's likely intent.

Explanation of Provision

The bill provides that the right of recovery with respect to QTIP is waived only to the extent that language in the decedent's will or revocable trust specifically so indicates (e.g., by a specific reference to QTIP, the QTIP trust, section 2044, or section 2207A). Thus, a general provision specifying that all taxes be paid by the estate is no longer sufficient to waive the right of recovery.

The bill also provides that the right of contribution for property over which the decedent retained enjoyment or the right to income is waived by a specific indication in the decedent's will or revocable trust, but specific reference to section 2207B is no longer required.

Effective Date

The provision applies to decedents dying after the date of enactment.

2. Adjustments for gifts within 3 years of decedent's death (sec. 14612 of the bill and secs. 2035 and 2038 of the code)

Present Law

The first $10,000 of gifts of present interests to each donee during any 1 calendar year are excluded from Federal gift tax.

The value of the gross estate includes the value of any previously transferred property if the decedent retained the power to revoke the transfer (sec. 2038). The gross estate also includes the value of any property with respect to which such power is relinquished during the 3 years before death (sec. 2035). This rule has been interpreted to include in the gross estate certain transfers made from a revocable trust within 3 years of death.[158] Such inclusion subjects gifts that would otherwise qualify under the annual $10,000 exclusion to estate tax.

Reasons for Change

The inclusion of certain property transferred during the 3 years before death is directed at transfers that would otherwise reduce the amount subject to estate tax by more than the amount subject to gift tax, disregarding appreciation between the times of gift and death. Because all amounts transferred from a revocable trust are subject to the gift tax, the committee believes that inclusion of such amounts is unnecessary where the transferor has retained no power over the property transferred out of the trust. It is understood that repeal of such inclusion eliminates a principal tax disadvantage of funded revocable trusts, which are generally used for nontax purposes.

Explanation of Provision

The bill provides that a transfer from a revocable trust (i.e., a trust described under section 676) is treated as if made directly by the grantor. Thus, an annual exclusion gift from such trust is not included in the gross estate. The provision is not intended to create an inference with respect to the treatment of transfers from revocable trusts under present law.

The provision also revises section 2035 to improve its clarity.

Effective Date

The provision applies to decedents dying after the date of enactment.

3. Clarification of qualified terminable interest rules (sec. 14613 of the bill and secs. 2044, 2056(b)(7), and 2523(f) of the code)

Present Law

A marital deduction is allowed for qualified terminal interest property ("QTIP"). Property is QTIP only if the surviving spouse has a qualifying income interest for life (e.g., the spouse is entitled

[158] See, e.g., *Jalkut Estate* v. *Commissioner.* 96 T.C. 675 (1991) (transfers from revocable trust to permissible beneficiaries of the trust includible in the grantor's gross estate); LTR 9117003 (same).

to all of the income from the property payable at least annually). QTIP generally is includible in the surviving spouse's gross estate.

The U.S. Tax Court has held that, in order to satisfy the QTIP requirements, the income accumulating between the last distribution date and the date of the surviving spouse's death (the "accumulated income") must be paid to the spouse's estate or be subject to a power of appointment held by the spouse. See *Estate of Howard* v. *Commissioner*, 91 T.C. 329, 338 (1988), *rev'd*, 910 F.2d 633 (9th Cir. 1990). In contrast, proposed Treasury regulations presently provide that an income interest may constitute a qualifying income interest for life even if the accumulated income is not required to be distributed to the surviving spouse or the surviving spouse's estate. *See* Treas. Reg. secs. 20.2056(b)–7(d)(4), 25.2523(f)–1(c)(1).

Reasons for Change

The committee believes that an income interest may constitute a qualifying income interest for life even if the accumulated income is not required to be distributed to the surviving spouse or the surviving spouse's estate. The provision will alleviate the uncertainty caused by the Tax Court opinion in *Estate of Howard* as to when a trust qualifies for the marital deduction. This uncertainty makes planning difficult and necessitates closing agreements designed to prevent the whipsaw that would occur if a deduction is allowed for property that is not subsequently included in the spouse's estate.

Explanation of Provision

Under the bill, an income interest does not fail to be a qualified income interest for life solely because the accumulated income is not required to be distributed to the surviving spouse. Such income is includible in the surviving spouse's gross estate. The provision is not intended to create an inference regarding the definition of a qualified income interest for life under present law.

Effective Date

The provision applies to decedents dying, and gifts made, after the date of enactment. However, the bill does not include in the surviving spouse's gross estate property transferred before the date of enactment for which no marital deduction was claimed.

4. Transitional rule under section 2056A (sec. 14614 of the bill and sec. 2056A of the code)

Present Law

A "marital deduction" generally is allowed for estate and gift tax purposes for the value of property passing to a spouse. The Technical and Miscellaneous Revenue Act of 1988 [TAMRA] denied the marital deduction for property passing to an alien spouse outside a qualified domestic trust [QDT]. An estate tax generally is imposed on corpus distributions from a QDT.

TAMRA defined a QDT as a trust that, among other things, required all trustees be U.S. citizens or domestic corporations. This provision was modified in the Omnibus Budget Reconciliation Acts of 1989 and 1990 to require that at least one trustee be a U.S. citizen or domestic corporation and that no corpus distribution be made unless such trustee has the right to withhold any estate tax imposed on the distribution (the "withholding requirement").

Reasons for Change

Wills drafted under the TAMRA rules must be revised to conform with the withholding requirement, even though both the TAMRA rule and its successor ensure that a U.S. trustee is personally liable for the estate tax on a QDT. Reinstatement of the TAMRA rule for wills drafted in reliance upon it reduces the number of will revisions necessary to comply with statutory changes, thereby simplifying estate planning.

Explanation of Provision

A trust created before the enactment of the Omnibus Budget Reconciliation Act of 1990 is treated as satisfying the withholding requirement if its governing instrument requires that all trustees be U.S. citizens or domestic corporations.

Effective Date

The provision applies as if included in the Omnibus Budget Reconciliation Act of 1990.

5. Opportunity to correct certain failures under section 2032A (sec. 14615 of the bill and sec. 2032A of the code)

Present Law

For estate tax purposes, an executor may elect to value certain real property used in farming or other closely held business operations at its current use value rather than its highest and best use (sec. 2032A). A written agreement signed by each person with an interest in the property must be filed with the election.

Treasury regulations require that a notice of election and certain information be filed with the Federal estate tax return (Treas. Reg. sec. 20.2032A–8). The administrative policy of the Treasury Department is to disallow current use valuation elections unless the required information is supplied.

Under procedures prescribed by the Treasury Department, an executor who makes the election and substantially complies with the regulations but fails to provide all required information or the signatures of all persons with an interest in the property may supply the missing information within a reasonable period of time (not exceeding 90 days) after notification by the Treasury Department.

Reasons for Change

It is understood that executors commonly fail to include with the filed estate tax return a recapture agreement signed by all persons with an interest in the property or all information required by Treasury regulations. It is believed that allowing such signatures or information to be supplied later is consistent with the legislative intent of section 2032A and eases return filing.

Explanation of Provision

The bill extends the procedures allowing subsequent submission of information to any executor who makes the election and submits the recapture agreement, without regard to compliance with the Treasury regulations. Thus, the bill allows the current use valuation election if the executor supplies the required information within a reasonable period of time (not exceeding 90 days) after notification by the IRS. During that time period, the bill also allows the addition of signatures to a previously filed agreement.

Effective Date

The provision applies to decedents dying after the date of enactment.

6. Unified credit of decedent increased by unified credit of spouse used on split gift included in decedent's gross estate (sec. 14616 of the bill and sec. 2010 of the code)

Present Law

A gift tax is imposed on transfers by gift during life and an estate tax is imposed on transfers at death. The gift and estate taxes are a unified transfer tax system in that one progressive tax is imposed on the cumulative transfers during lifetime and at death. The amount of gift tax payable for any taxable period generally is determined by multiplying the applicable tax rate (from the unified rate schedule) by the cumulative lifetime taxable transfers made by the taxpayer and then subtracting any gift taxes payable for prior taxable periods. This amount is reduced by any available unified credit (and other applicable credits) to determine the gift tax liability for the taxable period. Also, the first $10,000 of gifts of present interests to each donee during any 1 calendar year are excluded from Federal gift tax.

The amount of estate tax payable generally is determined by multiplying the applicable tax rate (from the unified rate schedule) by the cumulative post-1976 taxable transfers made by the taxpayer and then subtracting any transfer taxes payable for prior taxable periods. This amount is reduced by any remaining available unified credit (and other applicable credits) to determine the estate tax liability. The estate tax is imposed on all of the assets held by the decedent at his death, including the value of property previously transferred by the decedent in which the decedent had certain retained powers or interests (e.g., sections 2036 (relating to transfers with retained life estate), 2037 (relating to transfers taking effect at death), 2038 (relating to revocable trusts), or 2042 (relating to proceeds of life insurance)). Under section 2035, the estate tax also would apply with respect to property in which such a retained power or interest is transferred within 3 years of death.

Under section 2513, one spouse can elect to treat a gift made by the other spouse to a third person as made one-half by each spouse (i.e., "gift-splitting").

Reasons for Change

The ability to gift-split is intended to equalize the treatment of spouses in community property States and noncommunity property States. Gift-splitting effectively permits the transferor taxpayer to benefit from, among other things, any unified credit allowable to the nontransferor spouse. The benefit of the nontransferor spouse's unified credit is lost, however, in circumstances where the split-gift property is subsequently included in the transferor spouse's estate under sections 2035, 2036, 2037, or 2038 (e.g., where the transferor spouse had retained a life estate such that the value of the entire property, including the transferred remainder interest, is includible in the transferor's estate under section 2036). The committee believes that it is inappropriate that the benefit of the nontransferor spouse's unified credit be lost in such circumstances.

Explanation of Provision

With respect to any split-gift property that is subsequently included in the estate of the transferor spouse under sections 2035, 2036, 2037 or 2038, the bill increases the unified credit allowable to the transferor spouse's estate by the amount of the unified credit previously allowed to the nontransferor spouse with respect to the split gift.

Effective Date

The provision applies to gifts made after the date of enactment.

7. Reformation of defective bequests, etc. to spouse of decedent (sec. 14617 of the bill and secs. 2056(b) and 2523 of the code)

Present Law

A "marital deduction" generally is allowed for estate and gift tax purposes for the value of property passing to a spouse. However, "terminable interest" property (i.e., an interest in property that will terminate or fail) transferred to a spouse generally will only qualify for the marital deduction under certain special rules designed to ensure that there will be an estate or gift tax to the transferee spouse on unspent transferred proceeds. Thus, the effect of a marital deduction with the terminable interest rule is to provide only a method of deferral of the estate or gift tax, not exemption. One of the special terminable interest rules (code sec. 2056(b)(5)) provides that the marital deduction is allowed where the decedent transfers property to a trust that is required to pay income to the surviving spouse and the surviving spouse has a general power of appointment at that spouse's death (under this so-called power of appointment trust, the power of appointment both provides the surviving spouse with power to control the ultimate disposition of the trust assets and assures that the trust assets will be subject to estate or gift tax). Another special terminable interest rule called the "qualified terminable interest property" rule [QTIP] generally permits a marital deduction for transfers by the decedent to a trust that is required to distribute all of the income to the surviving spouse at least annually and an election is made to subject the transferee spouse to transfer tax on the trust property. To qualify for the marital deduction, a power of appointment trust or QTIP trust must meet certain specific requirements. If there is a technical defect in meeting those requirements, the marital deduction may be lost.

Reasons for Change

The IRS generally has required strict compliance with the requirements for a qualified power of appointment trust under section 2056(b)(5) or for QTIP under section 2056(b)(7). As a result, taxpayers have been unable to qualify for the marital deduction due to inadvertent or unavoidable failure to meet those requirements. Accordingly, the committee believes it is appropriate to provide a reformation procedure to allow such failures to be cured in order that the marital deduction not be lost.

Explanation of Provision

The bill allows the marital deduction with respect to a defective power of appointment or QTIP trust if there is a "qualified reformation" of the trust that corrects the defect. In order to qualify, the reformation must change the governing instrument in a manner that cures the defects to qualification of the trust for the marital deduction. In addition, where a reformation proceeding is commenced after the due date for the estate tax return (including extensions), the reformation would qualify only if, prior to reformation, the governing instrument provides first, that the surviving spouse is entitled to all of the income from the property for life, and second, no person other than the surviving spouse is entitled to any distributions during the surviving spouse's life. With respect to QTIP, an election to qualify must be made by the executor on the estate tax return as required by section 2056(b)(7)(B)(v).

The determination of whether a marital deduction should be allowed (i.e., the reformation has cured the defects to qualification and otherwise qualifies under this provision) is made either as of the due date for filing the estate or gift tax return (including any extensions) or the time that changes are completed pursuant to a reformation proceeding. The statute of limitations is extended with respect to the estate or gift tax attributable to the trust property until 1 year after the date the Treasury Department is notified that a qualified reformation has been completed or that the reformation proceeding has otherwise terminated.

Effective Date

The provision applies to decedents dying after the date of enactment.

8. Gifts may not be revalued for estate tax purposes after expiration of statute of limitations (sec. 14618 of the bill and secs. 2001, 6501(c)(9) and 7477 of the code)

Present Law

The Federal estate and gift taxes are unified so that a single progressive rate schedule is applied to an individual's cumulative gifts and bequests. The tax on gifts made in a particular year is computed by determining the tax on the sum of the taxable gifts made that year and all prior years and then subtracting the tax on the prior years' taxable gifts and the unified credit. Similarly, the estate tax is computed by determining the tax on the sum of the taxable estate and prior taxable gifts and then subtracting the tax on taxable gifts and the unified credit. Under a special rule applicable to the computation of the gift tax (sec. 2504(c)), the value of gifts made in prior years is the value that was used to determine the prior year's gift tax. There is no comparable rule in the case of the computation of the estate tax.

Generally, any estate or gift tax must be assessed within 3 years after the filing of the return. No proceeding in a court for the collection of an estate or gift tax can be begun without an assessment within the 3-year period. If no return is filed, the tax may be assessed, or a suit commenced to collect the tax without assessment, at any time. If an estate or gift tax return is filed, and the amount of unreported items exceeds 25 percent of the amount of the reported items, the tax may be assessed or a suit commenced to collect the tax without assessment, within 6 years after the return was filed (sec. 6501).

Commencement of the statute of limitations generally does not require that a particular gift be disclosed. A special rule, however, applies to certain gifts that are valued under the special valuation rules of Chapter 14. The gift tax statute of limitations runs for such a gift only if it is disclosed on a gift tax return in a manner adequate to apprise the Secretary of the Treasury of the nature of the item.

Most courts have permitted the Commissioner to redetermine the value of a gift for which the statute of limitations period for the gift tax has expired in order to determine the appropriate tax rate bracket and unified credit for the estate tax. *See,* e.g., *Evanson* v. *United States,* 74 AFTR 2d 94–5128 (9th Cir. 1994); *Stalcup* v. *United States,* 946 F. 2d 1125 (5th Cir. 1991); Estate of Levin, 1991 T.C. Memo 1991–208, *aff'd* 986 F. 2d 91 (4th Cir. 1993); *Estate of Smith* v. *Commissioner,* 94 T.C. 872 (1990). But see *Boatman's First National Bank* v. *United States,* 705 F. Supp. 1407 (W.D. Mo. 1988) (Commissioner not permitted to revalue gifts).

Reasons for Change

Revaluation of lifetime gifts at the time of death requires the taxpayer to retain records for a potentially lengthy period. Rules that encourage a determination within the gift tax statute of limitations ease transfer tax administration by eliminating reliance on stale evidence and reducing the period for which retention of records is required.

Explanation of Provision

The bill provides that a gift for which the limitations period has passed cannot be revalued for purposes of determining the applicable estate tax bracket and available unified credit. For gifts made in calendar years after the date of enactment, the bill also extends the special rule governing gifts valued under Chapter 14 to all gifts. Thus, the statute of limitations will not run on an inadequately disclosed transfer in calendar years after the date of enactment, regardless of whether a gift tax return was filed for other transfers in that same year.

It is intended that, in order to revalue a gift that has been adequately disclosed on a gift tax return, the IRS must issue a final notice of redetermination of value (a "final notice") within the statute of limitations applicable to the gift for gift tax purposes (generally, 3 years). This rule is applicable even where the value of the gift as shown on the return does not result in any gift tax being owed (e.g., through use of the unified credit). It is also anticipated that the IRS will develop an administrative appeals process whereby a taxpayer can challenge a redetermination of value by the IRS prior to issuance of a final notice.

A taxpayer who is mailed a final notice may challenge the redetermined value of the gift (as contained in the final notice) by filing a motion for a declaratory judgment with the Tax Court. The motion must be filed on or before 90 days from the date that the final notice was mailed. The statute of limitations is tolled during the pendency of the Tax Court proceeding.

Effective Date

The provision generally applies to gifts made after the date of enactment. The extension of the special rule under chapter 14 to all gifts applies to gifts made in calendar years after the date of enactment.

9. Clarifications relating to disclaimers (sec. 14619 of the bill and sec. 2518 of the code)

Present Law

Historically, there must be acceptance of a gift in order for the gift to be completed under State law and there is no taxable gift for Federal gift tax purposes unless there is a completed gift. Most States have rules that provide that, where there is a disclaimer of a gift, the property passes to the person who is entitled to the property had the disclaiming party died before the purported transfer.

In the Tax Reform Act of 1976, Congress provided a uniform disclaimer rule (section 2518) that specified how and when a disclaimer under State law must be made in order to be effective for Federal transfer tax purposes. Under section 2518, a State law type disclaimer is effective for Federal transfer tax purposes if it is an irrevocable and unqualified refusal to accept an interest in property and certain other requirements are satisfied. One of these other requirements is that the disclaimer generally must be made in writing not later than 9 months after the transfer creating the interest occurs. Section 2518 is not presently effective for Federal tax purposes other than transfer taxes.

In 1981, Congress added a rule to section 2518 that allowed certain transfers of property to be treated as a qualified disclaimer. In order to qualify, these transfer-type disclaimers must be a written transfer of the disclaimant's "entire interest in the property" to persons who would have received the property had there been a valid disclaimer under State law (sec. 2518(c)(3)). Like other disclaimers, the transfer-type disclaimer generally must be made within 9 months of the transfer creating the interest.

Reasons for Change

Under present law, a State law type disclaimer can be a qualified disclaimer even first, where it is only a partial disclaimer of the property interest, or second, where the disclaimant spouse retains an interest in the property. In contrast, it is presently unclear whether a transfer-type disclaimer can qualify under similar circumstances. Thus, in order to equalize the treatment of State law type disclaimers and transfer-type disclaimers, the committee believes it is appropriate to allow a transfer-type disclaimer of an undivided portion of property or a transfer-type disclaimer where the disclaimant spouse has retained an interest in the property to be treated as a qualified disclaimer for transfer tax purposes.

The committee also believes that qualified disclaimers should be effective for Federal income tax purposes, as well as transfer tax purposes.

Explanation of Provision

The bill allows a transfer-type disclaimer of an "undivided portion" of the disclaimant transferor's interest in property to qualify under section 2518. Also, the bill allows a spouse to make a qualified transfer-type disclaimer where the disclaimed property is transferred to a trust in which the disclaimant spouse has an interest (e.g., a credit shelter trust). Finally, the bill provides that a qualified disclaimer for transfer tax purposes under section 2518 is also effective for Federal income tax purposes (e.g., disclaimers of interests in annuities and income in respect of a decedent).

None of the foregoing provisions are intended to create an inference regarding the Federal tax treatment of disclaimers under present law.

Effective Date

The provision applies to disclaimers made after the date of enactment.

10. Clarification of treatment of survivor annuities under qualified terminable interest rules (sec. 14620 of the bill and sec. 2056(b)(7)(C) of the code)

Present Law

Community property

Under State community property laws, each spouse owns an undivided one-half interest in each community property asset. In community property States, a nonparticipant spouse may be treated as having a vested community property interest in his or her spouse's qualified plan, individual retirement arrangement, or simplified employee pension plan.

Transfer tax treatment of qualified plans

In the Retirement Equity Act of 1984 [REA], qualified retirement plans were required to provide automatic survivor benefits first, in the case of a participant who retires under the plan, in the form of a qualified joint and survivor annuity, and second, in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, in the form of a preretirement survivor annuity. A participant generally is permitted to waive such annuities, provided he or she obtains the written consent of his or her spouse.

The Tax Reform Act of 1986 repealed the estate tax exclusion, formerly contained in section 2039, for certain interests in qualified plans owned by a nonparticipant spouse attributable to community property laws and made certain other changes to conform the transfer tax treatment of qualified and nonqualified plans.

Also, under another change made by the Tax Reform Act of 1986, a survivorship interest in an annuity interest arising out of the decedent's employment that is includible his or her estate (under section 2039) that passes to the nonparticipant spouse is treated as a deductible marital transfer (i.e., the annuity interest is treated as a qualifying income interest for purposes of the marital deduction under the Qualified Terminable Interest Property [QTIP][159] rules unless the executor of the decedent's estate elects otherwise) (sec. 2056(b)(7)(C)). Thus, in noncommunity property States, no estate tax generally is imposed on such survivor annuity interests in the nonsurviving spouse's estate. In contrast, an interest of the nonparticipant spouse arising under community property laws in an annuity derived from the employment of his or her spouse is includible in his or her estate under section 2033 and, therefore, may not qualify as a deductible transfer to his or her surviving spouse under the QTIP rules.

Reasons for Change

The committee believes that survivorship interests in annuities in community property States should be accorded similar treatment to the tax treatment of interests in such annuities in noncommunity property States. Accordingly, the bill would clarify that the transfer at death of a survivorship interest in an annuity to a surviving spouse will be a deductible marital transfer under the QTIP rules regardless of whether the decedent's annuity interest arose out of his or her employment or arose under community property laws by reason of the employment of his or her spouse.

Explanation of Provision

The bill clarifies that the marital deduction is available with respect to a nonparticipant spouse's interest in an annuity attributable to community property laws where he or she predeceases the participant spouse. Under the bill, the nonparticipant spouse's

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[159] In general, QTIP is property which passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and which the executor elected to treat as QTIP. A surviving spouse generally has a qualifying income interest for life if he or she is entitled to all the income from the property payable at least annually, and no person has the power to appoint any part of the property to any person other than the surviving spouse.

interest in an annuity arising under the community property laws of a State that passes to the surviving participant spouse may qualify for treatment as QTIP under section 2056(b)(7).

The provision is not intended to create an inference regarding the treatment under present law of a transfer to a surviving spouse of the decedent spouse's interest in an annuity arising under community property laws.

Effective Date

The provision applies to decedents dying, or waivers, transfers and disclaimers made, after the date of enactment.

11. Treatment under qualified domestic trust rules of forms of ownership which are not trusts (sec. 14621 of the bill and sec. 2056A(c) of the code)

Present Law

Trusts are not permitted in some countries (e.g., many civil law countries).[160] As a result, it is not possible to create a QDT in those countries.

Reasons for Change

The estate of a decedent with a nonresident spouse should not be precluded from qualifying for the marital deduction in situations where the use of a trust is prohibited by another country. Accordingly, the committee believes it is appropriate to grant regulatory authority to allow qualification for the marital deduction in such situations where the Treasury Department determines that another similar arrangement allows the United States to retain jurisdiction and provides adequate security for the payment of U.S. transfer taxes on subsequent transfers by the surviving spouse of the property transferred by the decedent.

Explanation of Provision

The bill provides the Treasury Department with regulatory authority to treat as trusts legal arrangements that have substantially the same effect as a trust. It is anticipated that such regulations, if any, would only permit a marital deduction with respect to nontrust arrangements under which the United States would retain jurisdiction and adequate security to impose U.S. transfer tax on transfers by the surviving spouse of the property transferred by the decedent. Possible arrangements could include the adoption of a bilateral treaty that provides for the collection of U.S. transfer tax from the noncitizen surviving spouse or a closing agreement process under which the surviving spouse waives treaty benefits, allows the U.S. to retain taxing jurisdiction and provides adequate security with respect to such transfer taxes.

[160] Note that in some civil law States (e.g., Louisiana) an entity similar to a trust, called a usufruct, exists.

Effective Date

The provision applies to decedents dying after the date of enactment.

12. Authority to waive requirement of U.S. trustee for qualified domestic trusts (sec. 14622 of the bill and sec. 2056A(a)(1)(A) of the code)

Present Law

In order for a trust to be a QDT, a U.S. trustee must have the power to approve all corpus distributions from the trust. In some countries, trusts may be prohibited from having a U.S. trustee (e.g., some countries do not allow real property to be placed in trust if a U.S. trustee must approve distributions from the trust.) As a result, such trusts cannot qualify as a QDT.

Reasons for Change

The estate of a decedent with a nonresident spouse should not be precluded from qualifying for the marital deduction in situations where the use of a U.S. trustee is prohibited by another country. Accordingly, the committee believes it is appropriate to grant regulatory authority to allow qualification for the marital deduction in such situations where the Treasury Department determines that the United States can retain jurisdiction and other adequate security has been provided for the payment of U.S. transfer taxes on subsequent transfers by the surviving spouse of the property transferred by the decedent.

Explanation of Provision

In order to permit the establishment of a QDT in those situations where a country prohibits a trust from having a U.S. trustee, the bill provides the Treasury Department with regulatory authority to waive the requirement that a QDT have a U.S. trustee. It is anticipated that such regulations, if any, provide an alternative mechanism under which the United States would retain jurisdiction and adequate security to impose U.S. transfer tax on transfers by the surviving spouse of the property transferred by the decedent. For example, one possible mechanism would be a closing agreement process under which the surviving spouse waives treaty benefits, allows the U.S. to retain taxing jurisdiction and provides adequate security with respect to such transfer taxes.

Effective Date

The provision applies to decedents dying after the date of enactment.

C. Generation-Skipping Tax Provisions

1. Severing of trusts holding property having an inclusion ratio of greater than zero (sec. 14631 of the bill and sec. 2642(a) of the code)

Present Law

A generation-skipping transfer tax [GST tax] generally is imposed on transfers, either directly or through a trust or similar arrangement, to a skip person (i.e., a beneficiary in more than one generation below that of the transferor). Transfers subject to the GST tax include direct skips, taxable terminations and taxable distributions. An exemption of $1 million is provided for each person making generation-skipping transfers. The exemption may be allocated by a transferor (or his or her executor) to transferred property .

If the value of the transferred property exceeds the amount of the GST exemption allocated to that property, the GST tax generally is determined by multiplying a flat tax rate equal to the highest estate tax rate (i.e., currently 55 percent) by the "inclusion percentage" and the value of the taxable property at the time of the taxable event. The "inclusion percentage" is the number one minus the "exclusion percentage". The exclusion percentage generally is calculated by dividing the amount of the GST exemption allocated to the property by the value of the property.

Reasons for Change

The committee believes it is appropriate to provide flexibility for the severance of trusts to minimize the need for complicated governing documents and to remove a potential trap for poorly advised taxpayers. The committee understands that a similar result can already be obtained by creating separate trusts in the governing document. The flexibility of a severance should only be afforded, however, in situations where the Treasury Department believes there is no significant opportunity for tax avoidance as a result of the severance.

Explanation of Provision

If a trust with an inclusion ratio of greater than zero is severed into two separate trusts, the bill allows the trustee to elect to treat one of the separate trusts as having an inclusion ratio of zero and the other separate trust as having an inclusion ratio of one. To qualify for this treatment, the separate trust with the inclusion ratio of one must receive an interest in each property held by the single trust (prior to severance) equal to the single trust's inclusion ratio, except to the extent otherwise provided by regulation. The remaining interests in each property will be transferred to the separate trust with the inclusion ratio of zero. The election must be made at a time and in a manner prescribed by the Treasury Department. It is intended that the time for making the election be reasonably soon after the transfer to the single trust.

Effective Date

The provision is effective for severances of trusts occurring after the date of enactment.

2. Clarification of who is transferor where subsequent gift by reason of power of appointment (sec. 14632 of the bill and sec. 2652(a)(1) of the code)

Present Law

The exercise or release of a general power of appointment (e.g., a power of withdrawal) generally is treated as a transfer of property by the person who possesses such power (sec. 2514(b)). Under section 2514(e), the lapse of a general power of appointment also is treated as a taxable transfer except to the extent that the power does not exceed the greater of $5,000 or 5 percent of the fair market value of the property with respect to which the power could have been exercised. Example 5 of Prop. Treas. Reg. sec. 26.2652–1(a)(5) involves a trust created by a parent that provided an income interest to his child for life, remainder to his grandchild with the child having a power to withdraw $10,000 within 60 days of the creation of the trust. The example states that the parent is the transferor with respect to the entire trust and the child is the transferor as to the excess of $10,000 over the greater of $5,000 or 5 percent of the trust.

Reasons for Change

The committee wishes to resolve the uncertainty under present law regarding the identity of the transferor for GST tax purposes where a transfer is made of property with respect to which another person is granted a power of withdrawal or general power of appointment.

Explanation of Provision

The bill provides that an individual cannot be treated as a "transferor" with respect to any portion of property with respect to which another person is treated as the "transferor" by reason of the exercise, release or lapse of a general power of appointment with respect to such property. Thus, for example, applying the same facts as contained in Example 5 of Prop. Treas. Reg. sec. 26.2652–1(a)(5), the parent is not treated as the transferor with respect to any portion of the trust which the child is deemed to have transferred by reason of the child's power to withdraw.

The bill is not intended to create an inference regarding the identity of the transferor for GST tax purposes under present law.

Effective Date

The provision applies to the exercise, release or lapse of a general power of appointment occurring after the date of enactment.

3. Taxable termination not to include direct skips (sec. 14633 of the bill and sec. 2612(a)(1) of the code)

Present Law

A generation-skipping transfer tax [GST tax] generally is imposed on transfers, either directly or through a trust or similar arrangement, to a skip person (i.e., a beneficiary in more than one generation below that of the transferor). Transfers subject to the GST tax include direct skips, taxable terminations and taxable distributions. For this purpose, a direct skip is any transfer subject to estate or gift tax of an interest in property to a skip person (sec. 2612(c)(1)). A taxable termination is a termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in trust unless, immediately after such termination, a nonskip person has an interest in the property, or unless at no time after the termination may a distribution (including a distribution upon termination) be made from the trust to a skip person (sec. 2612(a)). A taxable distribution is a distribution from a trust to a skip person (other than a taxable termination or a direct skip)(sec. 2612(b)).

Direct skips are subject to less GST tax than taxable terminations and distributions since the GST tax on direct skips is paid by the transferor (sec. 2603(a)(3)) and, therefore, the tax base for a direct skip is tax exclusive (like the Federal gift tax), while the GST tax on taxable terminations and distributions is paid by the trust or beneficiary (secs. 2603(a)(1) & (2)) and, therefore, the tax base on taxable terminations and distributions is tax inclusive (like the Federal estate tax).

Reasons for Change

Present law is unclear whether a transaction should be taxed as a direct skip or a taxable termination where the transaction meets both definitions. For example, a distribution from a marital deduction trust to the settlor's grandchildren upon the death of the settlor's spouse may be treated as both a direct skip and a taxable termination. The overlap between the two definitions may cause uncertainty regarding the calculation of the GST tax (i.e., on a tax exclusive or tax inclusive basis) and the availability of various exclusions (e.g., the predeceased parent exclusion which is limited to direct skips under present law).[161] Accordingly, the committee wishes to resolve this uncertainty by treating transactions that meet both definitions as a direct skip.

Explanation of Provision

The bill provides that, when a transfer is described as both a direct skip and a taxable termination, the transaction will be treated as a direct skip (i.e., treatment as a direct skip takes precedence over treatment as a taxable termination).

[161] Section 14634 of the bill extends the predeceased parent exception to certain taxable terminations.

Effective Date

The provision is effective for generation skipping transfers occurring after the date of enactment.

4. Expansion of exception from generation-skipping transfer tax for transfers to individuals with deceased parents (sec. 14634 of the bill and sec. 2651 of the code)

Present Law

Under the "predeceased parent exception", a direct skip transfer to a transferor's grandchild is not subject to the generation skipping transfer ("GST") tax if the child of the transferor who was the grandchild's parent is deceased at the time of the transfer (sec. 2612(c)(2)). This "predeceased parent exception" to the GST tax is not applicable to first, transfers to collateral heirs, e.g., grandnieces or grandnephews, or second, taxable terminations or taxable distributions.

Reasons for Change

The committee believes that a transfer to a collateral relative whose parent is dead should qualify for the predeceased parent exception in situations where the transferor decedent has no lineal heirs, because no motive or opportunity to avoid transfer tax exists. For similar reasons, the committee believes that transfers to trusts should be permitted to qualify for the predeceased parent exclusion where the parent of the beneficiary is dead at the time that the transfer is first subject to estate or gift tax. The committee also understands that this treatment will remove a present law impediment to the establishment of charitable lead trusts.

Explanation of Provision

The bill extends the predeceased parent exception to transfers to collateral heirs, provided that the decedent has no living lineal descendants at the time of the transfer. For example, the exception would apply to a transfer made by an individual (with no living lineal heirs) to a grandniece where the transferor's nephew or niece who is the parent of the grandniece is deceased at the time of the transfer.

In addition, the bill extends the predeceased parent exception (as modified by the change in the preceding paragraph) to taxable terminations and taxable distributions, provided that the parent of the relevant beneficiary was dead at the earliest time that the transfer (from which the beneficiary's interest in the property was established) was subject to estate or gift tax. For example, where a trust was established to pay an annuity to a charity for a term for years with a remainder interest granted to a grandson, the termination of the term for years would not be a taxable termination subject to the GST tax if the grandson's parent (who is the son or daughter of the transferor) is deceased at the time the trust was created and the transfer creating the trust was subject to estate or gift tax.

Effective Date

The provision is effective for generation skipping transfers occurring after the date of enactment.

SUBTITLE G. EXCISE TAX SIMPLIFICATION

A. Provisions Relating to Distilled Spirits, Wines, and Beer (secs. 14701–14711 of the bill and secs. 5008(c), 5044, 5053, 5055, 5115, 5175(c), 5207, new sec. 5222(b), and sec. 5418(b) of the code)

Present Law

Credit or refund for imported bottled distilled spirits returned to bonded premises

Present law provides that when tax-paid distilled spirits which have been withdrawn from bonded premises of a distilled spirits plant are returned for destruction or redistilling, the excise tax is refunded (sec. 5008(c)). This provision does not apply to imported bottled distilled spirits because they are withdrawn from customs custody and not from bonded premises of a distilled spirits plant.

Authority to cancel or credit bonds without submission of records

Bond generally must be furnished to the Treasury Department when distilled spirits are removed from bonded premises of a distilled spirits plant for exportation without payment of tax. These bonds are canceled or credited when evidence is submitted to the Treasury that the distilled spirits have been exported (sec. 5175(c)).

Required maintenance of records on premises of distilled spirits plant

Distilled spirits plant proprietors are required to maintain records of their production, storage, denaturation, and other processing activities on the premises where the operations covered by the records are carried out (sec. 5207(c)).

Transfers from breweries to distilled spirits plants

Under present law, beer may be transferred without payment of tax from a brewery to a distilled spirits plant to be used in the production of distilled spirits, but only if the brewery is contiguous to the distilled spirits plant (sec. 5222(b)).

Requirement for wholesale dealers in liquors to post sign

Wholesale liquor dealers (i.e., dealers, other than wholesale dealers in beer alone, who sell distilled spirits, wines, or beer to other persons who re-sell such products) are required to post a sign conspicuously on the outside of their place of business indicating that they are wholesale liquor dealers (sec. 5115).

Refund of tax on wine returned to bond

Under present law, when unmerchantable wine is returned to bonded production premises, tax that has been paid is returned or credited to the proprietor of the bonded wine cellar to which the wine is delivered (sec. 5044). In contrast, when beer is returned to a brewery, tax that has been paid is returned or credited, regardless of whether the beer is unmerchantable (sec. 5056(a)).

Use of ameliorating material in certain wines

The code contains rules governing the extent to which ameliorating material (e.g., sugar) may be added to wines made from high acid fruits and the product still be labelled as a standard, natural wine. In general, ameliorating material may not exceed 35 percent of the volume of juice and ameliorating material combined (sec. 5383(b)(1)). However, wines made exclusively from loganberries, currants, or gooseberries are permitted a volume of ameliorating material of up to 60 percent (sec. 5384(b)(2)(D)).

Domestically produced beer for use by foreign embassies, etc.

Under present law, domestically produced distilled spirits and wine may be removed from bond, without payment of tax, for transfer to any customs bonded warehouse for storage pending removal for the official or family use of representatives of foreign governments or public international organizations (secs. 5066 and 5362(e)). A similar rule also applies to imported distilled spirits, wine, and beer. No such provision exists under present law for domestically produced beer.

Withdrawal of beer for destruction

Present law does not specifically permit beer to be removed from a brewery for destruction without payment of tax.

Records of exportation of beer

Present law provides that a brewer is allowed a refund of tax paid on exported beer upon submission to Treasury Department of certain records indicating that the beer has been exported (sec. 5055).

Transfer to brewery of beer imported in bulk

Imported beer brought into the United States in bulk containers may not be transferred from customs custody to brewery premises without payment of tax. Under certain circumstances, distilled spirits imported into the United States in bulk containers may be transferred from customs custody to bonded premises of a distilled spirits plant where bottling will occur without payment of tax (sec. 5232).

Reasons for Change

In addition to imposing taxes, the Internal Revenue Code regulates many other aspects of the alcoholic beverage industry. These regulations date in many cases from the Prohibition Era or earlier. In 1980, the method of collecting excise taxes on alcoholic beverages was changed from a system under which Treasury Department inspectors regularly were present at production facilities to a bonded premises system, which more closely tracks the systems used in connection with other Federal excise taxes. Many of the recordkeeping requirements and other regulatory measures imposed in connection with these taxes have not been modified to conform to these collection system changes. In addition, modification of statutory provisions is warranted in view of advances in technology used in the alcoholic beverage industry and environmental protection concerns.

Explanation of Provisions

Credit or refund for imported bottled distilled spirits returned to bonded premises

The procedures for refunds of tax collected on imported bottled distilled spirits returned to bonded premises are conformed to the rules for domestically produced and imported bulk distilled spirits. Thus, refunds will be available for all distilled spirits on their return to a bonded distilled spirits plant.

Authority to cancel or credit bonds without submission of records

For purposes of canceling or crediting bonds furnished when distilled spirits are removed from bonded premises for exportation, the Treasury Department is authorized to permit records of exportation to be maintained by the exporter, rather than requiring submission of proof of exportation to Treasury in all cases.

Repeal of required maintenance of records on premises of distilled spirits plant

Distilled spirits plant proprietors are permitted to maintain records of their activities at locations other than the premises where the operations covered by the records are carried out (e.g., corporate headquarters where tax audits currently are conducted), provided that the records are available for inspection by the Treasury Department during business hours.

Fermented material from any brewery may be received at a distilled spirits plant

Beer may be transferred without payment of tax from a brewery to a distilled spirits plant to be used in the production of distilled spirits, regardless of whether the brewery is contiguous to the distilled spirits plant. In the case of beer previously removed from a brewery, a transfer to a distilled spirits plant also may occur without the beer being first re-transferred to the brewery.

Repeal of requirement for wholesale dealers in liquors to post sign

The requirement that wholesale liquor dealers post a sign outside their place of business indicating that they are wholesale liquor dealers is repealed.

Refund of tax on wine returned to bond not limited to unmerchantable wine

The requirement that wine returned to bonded premises be “unmerchantable” in order for tax to be refunded to the proprietor of the bonded wine cellar to which the wine is delivered is repealed.

Use of additional ameliorating material in certain wines

The wine labelling restrictions are modified to allow any wine made exclusively from a fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry) to contain a volume of ameliorating material not in excess of 60 percent.

Domestically produced beer may be withdrawn free of tax for use by foreign embassies, etc.

The present-law rule applicable to domestically produced distilled spirits and wine (and imported distilled spirits, wine, and beer) which permits these products to be withdrawn from the place of production without payment of tax for the official or family use of representatives of foreign governments or public international organizations is extended to domestically produced beer.

Beer may be withdrawn free of tax for destruction

Beer may be removed from a brewery without payment of tax for destruction, subject to Treasury Department regulations.

Authority to allow drawback on exported beer without submission of records

The requirement that proof of exportation be submitted to the Treasury Department in all cases as a condition of receiving a refund of tax is repealed. This proof will continue to be required to be maintained at the exporter's place of business.

Transfer to brewery of beer imported in bulk without payment of tax

The present law rule applicable to distilled spirits imported into the United States in bulk containers is extended to beer imported into the United States in bulk containers, so that imported beer may, subject to Treasury regulations, be withdrawn from customs custody for transfer to a brewery without payment of tax.

Effective Date

These proposals generally are effective beginning 180 days after date of enactment. The provision deleting the requirement that wholesale liquor dealers post a sign outside their place of business is effective on the date of the proposal's enactment.

B. Consolidation of Tax on Aviation Gasoline (sec. 14721 of the bill and secs. 4041(c), 4081–4083, and 9502 of the code)

Present Law

Gasoline used in noncommercial (not for hire) aviation is subject to a 19.4-cents-per-gallon excise tax. 18.4 cents per gallon of this tax is collected when the gasoline is removed from a registered and bonded pipeline or barge terminal. The remaining 1 cent per gallon is imposed at the retail level.

Reasons for Change

The committee believes greater tax compliance and administrative simplification for taxpayers can be achieved by collecting the entire excise tax on aviation gasoline at only one point in that product's chain of distribution.

Explanation of Provision

Imposition of the aviation gasoline excise tax is consolidated, with the entire 19.4-cents-per-gallon rate being imposed when the gasoline is removed from a terminal facility.

Effective Date

The provision is effective for sales or uses beginning on January 1, 1996.

C. Other Excise Tax Provisions

1. Authority to grant exemptions from registration requirements (sec. 14731 of the bill and sec. 4222 of the code)

Present Law

Under section 4222, certain sales for exempt use of articles subject to Federal excise taxes may not be made without payment of tax unless the manufacturer, the first purchaser, and the second purchaser (if any) are all registered under regulations prescribed by the Secretary.

Reasons for Change

Allowing the Internal Revenue Service to exempt certain classes of taxpayers from the registration requirements will simplify the IRS's administration of the registration provisions. Also, the provision will reduce unnecessary paperwork for affected taxpayers

Explanation of Provision

The IRS is allowed to provide exemptions from generally applicable excise tax registration requirements for certain classes of taxpayers (rather than only all taxpayers or individually identified taxpayers).

Effective Date

The provision applies to sales occurring after the 180 days after the date of enactment.

2. Certain combinations not treated as manufacture under retail sales tax on heavy trucks (sec. 14732 of the bill and sec. 4051 of the code)

Present Law

A 12-percent excise tax is imposed on the sale of trucks, tractors, and trailers having a gross vehicle weight in excess of specified amounts (sec. 4051). Revenues from the tax are dedicated to the Highway Trust Fund. The tax is imposed on the first retail sale of a taxable vehicle or addition thereto.

Generally, repairs of used vehicles are treated as remanufacture (giving rise to tax on the entire vehicle) if—

(1) the transportation function of the truck is changed by additions or modifications to the chassis of the truck;

(2) a new vehicle is fabricated from a wrecked vehicle; or

(3) modifications to a used vehicle are so extensive that they extend the vehicle's useful life.

The mere addition of a fifth wheel to a taxable truck is not treated as remanufacture, although the fifth wheel itself would be taxed.

Reasons for Change

The committee was informed that different Internal Revenue Service districts are applying these provisions of the retail truck excise tax inconsistently. The committee determined that a statutory clarification was appropriate to ensure uniform application of the law to all taxpayers.

Explanation of Provision

Clarification is provided that the following activities do not constitute remanufacture when performed on a used truck or tractor chassis:

(1) removal of a fifth wheel and addition of a power take-off, hoist, and dump body; or

(2) simple addition of a power take-off, hoist, and dump body.

These activities will remain taxable to the extent of the modifications made.

Effective Date

The provision is effective on the date of enactment. No inference is intended by the prospective effective date that the activities described constitute remanufacture under present law.

3. Exemption from diesel fuel dyeing requirements with respect to certain States (sec. 14733 of the bill and secs. 4082 of the code)

Present Law

An excise tax totaling 24.4 cents per gallon is imposed on diesel fuel (code sec. 4081). In the case of fuel used in highway transportation, 17.5 cents per gallon (20 cents after September 20, 1995) is dedicated to the Highway Trust Fund. Revenues equal to 0.1 cent per gallon are dedicated to the Leaking Underground Storage Trust Fund. The remaining portion of this tax is imposed on transportation generally and is retained in the General Fund.

The diesel fuel tax is imposed on removal of the fuel from a terminal facility (i.e., at the "terminal rack"). Present law provides that tax is imposed on all diesel fuel removed from terminal facilities unless the fuel is destined for a nontaxable use and is indelibly dyed pursuant to Treasury Department regulations.

In general, the diesel fuel tax does not apply to nontransportation uses of the fuel. Off-highway business uses are included within this nontransportation use exemption. This exemption includes use on a farm for farming purposes and as fuel powering off-highway equipment (e.g., oil drilling equipment). Use as heating oil also is exempt. (Most fuel commonly referred to as heating oil is diesel fuel.) The tax also does not apply to fuel used by State and local governments, to exported fuels, and to fuel used in commercial shipping. Fuel contained in (or by) intercity buses and trains is partially exempt from the diesel fuel tax.

A similar dyeing regime exists for diesel fuel under the Clean Air Act. That Act prohibits the use on highways of diesel fuel with a sulphur content exceeding prescribed levels. This "high sulphur" diesel fuel is required to be dyed by the EPA. Urban areas in the State of Alaska were exempted from the Clean Air Act, but not the excise tax, dyeing regime for 3 years (until October 1, 1996); the exemption for more remote areas is permanent.

Reasons for Change

Most diesel fuel sold in rural areas of Alaska is sold for nontaxable, off-highway uses. This fact, and the Clean Air Act provision exempting those areas from that Act's dyeing requirement led the committee to believe that tax compliance in those areas can be achieved without dyeing diesel fuel destined for nontaxable uses.

Explanation of Provision

Diesel fuel sold in the State of Alaska will be exempt from the diesel dyeing requirement during the remainder of the period when that State is exempt from the Clean Air Act dyeing requirements. Thus, dyed diesel fuel may be used in taxable uses without penalties being imposed (subject to a certification procedure to be established by the Treasury Department).

Effective Date

The proposal is effective on the first day of the first calendar quarter beginning after the date of enactment.

4. Repeal of expired provisions (sec. 14743 and secs. 451(d) and 4495–4498 of the code)

Present Law

Temporary reduction in tax on piggyback trailers

Piggyback trailers and semitrailers sold within the 1-year period beginning on July 18, 1984, were permitted a temporary reduction in the retail excise tax rate on trailers.

Expiration of excise tax on deep seabed minerals

The Deep Seabed Mineral Resources Act (Public Law 96–283) imposed an excise tax on certain hard minerals mined on the deep seabed. The tax revenues were intended to fund obligations of the United States under a contemplated Law of the Sea Convention. Because the United States did not sign the treaty, this excise tax never became effective and the tax expired after June 28, 1990.

Explanation of Provision

The tax reduction for piggy back trailers and the deep seabed hard minerals excise tax provisions are repealed as "deadwood."

Effective Date

The proposals are effective on the date of enactment.

SUBTITLE H. ADMINISTRATIVE PROVISIONS

A. General Provisions

1. Repeal of authority to disclose whether a prospective juror has been audited (sec. 14801 of the bill and sec. 6103 of the code)

Present Law

In connection with a civil or criminal tax proceeding to which the United States is a party, the Secretary must disclose, upon the written request of either party to the lawsuit, whether an individual who is a prospective juror has or has not been the subject of an audit or other tax investigation by the Internal Revenue Service (sec. 6103(h)(5)).

Reasons for Change

This disclosure requirement, as it has been interpreted by several recent court decisions, has created significant difficulties in the civil and criminal tax litigation process. First, the litigation process can be substantially slowed. It can take the Secretary a considerable period of time to compile the information necessary for a response (some courts have required searches going back as far as 25 years). Second, providing early release of the list of potential jurors to defendants (which several recent court decisions have required, to permit defendants to obtain disclosure of the information from the Secretary) can provide an opportunity for harassment and intimidation of potential jurors in organized crime, drug, and some tax protester cases. Third, significant judicial resources have been expended in interpreting this procedural requirement that might better be spent resolving substantive disputes. Fourth, differing judicial interpretations of this provision have caused confusion. In some instances, defendants convicted of criminal tax offenses have obtained reversals of those convictions because of failures to comply fully with this provision.

Explanation of Provision

The bill repeals the requirement that the Secretary disclose, upon the written request of either party to the lawsuit, whether an individual who is a prospective juror has or has not been the subject of an audit or other tax investigation by the Internal Revenue Service.

Effective Date

The provision is effective for judicial proceedings pending on, or commenced after, the date of enactment.

2. Clarification of statute of limitations (sec. 14802 of the bill and sec. 6501 of the code)

Present Law

Passthrough entities (such as S corporations, partnerships, and certain trusts) generally are not subject to income tax on their taxable income. Instead, these entities file information returns and the entities' shareholders (or beneficial owners) report their pro rata share of the gross income and are liable for any taxes due.

Some believe that, prior to 1993, it may have been unclear as to whether the statute of limitations for adjustments that arise from distributions from passthrough entities should be applied at the entity or individual level (i.e., whether the 3-year statute of limitations for assessments runs from the time that the entity files its information return or from the time that a shareholder timely files his or her income tax return). In 1993, the Supreme Court held that the limitations period for assessing the income tax liability of an S corporation shareholder runs from the date the shareholder's return is filed (*Bufferd* v. *Comm.*, 113 S. Ct. 927 (1993)).

Reasons for Change

Uncertainty regarding the correct statute of limitations hinders the resolution of factual and legal issues and creates needless litigation over collateral matters.

Explanation of Provision

The bill clarifies that the return that starts the running of the statute of limitations for a taxpayer is the return of the taxpayer and not the return of another person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit.

Effective Date

The provision is effective for taxable years beginning after the date of enactment.

3. Certain notices disregarded under provision increasing interest rate on large corporate underpayments (sec. 14803 of the bill and sec. 6621 of the code)

Present Law

The interest rate on a large corporate underpayment of tax is the Federal short-term rate plus 5 percentage points. A large corporate underpayment is any underpayment by a subchapter C corporation of any tax imposed for any taxable period, if the amount of such underpayment for such period exceeds $100,000. The large corporate underpayment rate generally applies to periods beginning 30 days after the earlier of the date on which the first letter of proposed deficiency, a statutory notice of deficiency, or a nondeficiency letter or notice of assessment or proposed assessment is sent. For this purpose, a letter or notice is disregarded if the taxpayer makes a payment equal to the amount shown on the letter or notice within that 30-day period.

Reasons for Change

The large corporate underpayment rate generally applies if the underpayment of tax for a taxable period exceeds $100,000, even if the initial letter or notice of deficiency, proposed deficiency, assessment, or proposed assessment is for an amount less than $100,000. Thus, for example, under present law, a nondeficiency notice relating to a relatively minor mathematical error by the taxpayer may result in the application of the large corporate underpayment rate to a subsequently identified income tax deficiency.

Explanation of Provision

For purposes of determining the period to which the large corporate underpayment rate applies, any letter or notice is disregarded if the amount of the deficiency, proposed deficiency, assessment, or proposed assessment set forth in the letter or notice is not greater than $100,000 (determined by not taking into account any interest, penalties, or additions to tax).

Effective Date

The provision is effective for purposes of determining interest for periods after December 31, 1995.

4. Clarification of authority to withhold Puerto Rico income taxes from salaries of Federal employees (sec. 14804 of the bill and sec. 5517 of title 5, United States Code)

Present Law

If State law provides generally for the withholding of State income taxes from the wages of employees in a State, the Secretary of the Treasury shall (upon the request of the State) enter into an agreement with the State providing for the withholding of State income taxes from the wages of Federal employees in the State. For this purpose, a State is a State, territory, or possession of the United States. The Court of Appeals for the Federal Circuit recently held in *Romero* v. *United States* (38 F. 3d 1204 (1994)) that Puerto Rico was not encompassed within this definition; consequently, the court invalidated an agreement between the Secretary of the Treasury and Puerto Rico that provided for the withholding of Puerto Rico income taxes from the wages of Federal employees.

Reasons for Change

The committee believes that employees of the United States should be in no better or worse position than other employees vis-a-vis local withholding.

Explanation of Provision

The bill makes any Commonwealth eligible to enter into an agreement with the Secretary of the Treasury that would provide for income tax withholding from the wages of Federal employees.

Effective Date

The provision is effective on the date of enactment.

B. Tax Court Procedures

1. Overpayment determinations of Tax Court (sec. 14811 of the bill and sec. 6512 of the code)

Present Law

The Tax Court may order the refund of an overpayment determined by the Court, plus interest, if the IRS fails to refund such overpayment and interest within 120 days after the Court's decision becomes final. Whether such an order is appealable is uncertain.

In addition, it is unclear whether the Tax Court has jurisdiction over the validity or merits of certain credits or offsets (e.g., providing for collection of student loans, child support, etc.) made by the IRS that reduce or eliminate the refund to which the taxpayer was otherwise entitled.

Reasons for Change

Clarification of the jurisdiction of the Tax Court and the ability to appeal orders of the Tax Court would provide for greater certainty for taxpayers and the government in conducting cases before the Tax Court. Clarification will also reduce litigation.

Explanation of Provision

The bill clarifies that an order to refund an overpayment is appealable in the same manner as a decision of the Tax Court. The bill also clarifies that the Tax Court does not have jurisdiction over the validity or merits of the credits or offsets that reduce or eliminate the refund to which the taxpayer was otherwise entitled.

Effective Date

The provision is effective on the date of enactment.

2. Awarding of administrative costs (sec. 14812 of the bill and sec. 7430 of the code)

Present Law

Any person who substantially prevails in any action brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty may be awarded reasonable administrative costs incurred before the IRS and reasonable litigation costs incurred in connection with any court proceeding.

No time limit is specified for the taxpayer to apply to the IRS for an award of administrative costs. In addition, no time limit is specified for a taxpayer to appeal to the Tax Court an IRS decision denying an award of administrative costs. Finally, the procedural rules for adjudicating a denial of administrative costs are unclear.

Reasons for Change

The proper procedures for applying for a cost award are uncertain in some instances. Clarifying these procedures will decrease litigation over these procedural issues and will provide for expedited settlement of these claims.

Explanation of Provision

The bill provides that a taxpayer who seeks an award of administrative costs must apply for such costs within 90 days of the date on which the taxpayer was determined to be a prevailing party. The bill also provides that a taxpayer who seeks to appeal an IRS denial of an administrative cost award must petition the Tax Court within 90 days after the date that the IRS mails the denial notice.

The bill clarifies that dispositions by the Tax Court of petitions relating only to administrative costs are to be reviewed in the same manner as other decisions of the Tax Court.

Effective Date

The provision is effective on the date of enactment.

3. Redetermination of interest pursuant to motion (sec. 14813 of the bill and sec. 7481 of the code)

Present Law

A taxpayer may seek a redetermination of interest after certain decisions of the Tax Court have become final by filing a petition with the Tax Court.

Reasons for Change

It would be beneficial to taxpayers if a proceeding for a redetermination of interest supplemented the original deficiency action brought by the taxpayer to redetermine the deficiency determination of the IRS. A motion, rather than a petition, is a more appropriate pleading for relief in these cases.

Explanation of Provision

The bill provides that a taxpayer must file a "motion" (rather than a "petition") to seek a redetermination of interest in the Tax Court.

Effective Date

The provision is effective on the date of enactment.

4. Application of net worth requirement for awards of litigation costs (sec. 14814 of the bill and sec. 7430 of the code)

Present Law

Any person who substantially prevails in any action brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty may be awarded reasonable administrative costs incurred before the IRS and reasonable litigation costs incurred in connection with any court proceeding. A person who substantially prevails must meet certain net worth requirements to be eligible for an award of administrative or litigation costs. In general, only an individual whose net worth does not exceed $2,000,000 is eligible for an award, and only a corporation or partnership whose net worth does not exceed $7,000,000 is eligible for an award. (The net worth determination with respect to a partnership or S corporation applies to all actions that are in substance partnership actions or S corporation actions, including unified entity-level proceedings under sections 6226 or 6228, that are nominally brought in the name of a partner or a shareholder.)

Reasons for Change

Although the net worth requirements are explicit for individuals, corporations, and partnerships, it is not clear which net worth requirement is to apply to other potential litigants. It is also unclear how the individual net worth rules are to apply to individuals filing a joint tax return. Clarifying these rules will provide certainty for potential claimants and will decrease needless litigation over procedural issues.

Explanation of Provision

The bill provides that the net worth limitations currently applicable to individuals also apply to estates and trusts. The bill also provides that individuals who file a joint tax return shall be treated as one individual for purposes of computing the net worth limitations. Consequently, the net worths of both spouses are aggregated for purposes of this computation. An exception to this rule is provided in the case of a spouse otherwise qualifying for innocent spouse relief.

Effective Date

The provision applies to proceedings commenced after the date of enactment.

C. Authority for Cooperative Agreements State Tax Authorities (sec. 14821 of the bill and new sec. 7524 of the code)

Present Law

The IRS is generally not authorized to provide services to non-Federal agencies even if the cost is reimbursed (62 Comp. Gen. 323, 335 (1983)).

Reasons for Change

Most taxpayers reside in States with an income tax and, therefore, must file both Federal and State income tax returns each year. Each return is separately prepared, with the State return often requiring information taken directly from the Federal return. Permitting the IRS to enter into agreements that are designed to promote efficiency through joint tax administration programs with States would reduce the burden on taxpayers because much of the same information could be used by both governments.

For example, the burden on taxpayers could be significantly reduced through joint electronic filing of tax returns, whereby a taxpayer electronically transmits both Federal and State returns to one location. Joint Federal and State electronic filing could simplify and shorten return preparation time for taxpayers. Also, State governments could benefit from reduced processing costs, while the IRS could benefit from the potential increase in taxpayers who would elect to file electronically because they would be able to fulfill both their Federal and State obligations simultaneously.

Explanation of Provision

The bill provides that the Secretary is authorized to enter into cooperative agreements with State tax authorities to enhance joint tax administration. These agreements may include first, joint filing of Federal and State income tax returns, second, single processing of these returns, and (3) joint collection of taxes (other than Federal income taxes).

The bill provides that these agreements may require reimbursement for services provided by either party to the agreement. Any funds appropriated for tax administration may be used to carry out the responsibilities of the IRS under these agreements, and any reimbursement received under an agreement would be credited to the amount appropriated.

No agreement may be entered into that does not provide for the protection of confidentiality of taxpayer information that is required by section 6103.

Effective Date

The provision is effective on the date of enactment.

III. Votes of the Committee

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of titles XIII and XIV of the budget reconciliation recommendations.

Motion to report titles XIII and XIV

The Committee on Ways and Means approved the reconciliation provisions of titles XIII and XIV by a rollcall vote of 21 yeas and 15 nays (with a quorum being present). The vote was as follows:

Representatives	Aye	Nay	Representatives	Aye	Nay
Mr. Archer	X	....	Mr. Gibbons	....	X
Mr. Crane	....	....	Mr. Rangel	....	X
Mr. Thomas	X	....	Mr. Stark	....	X
Mr. Shaw	X	....	Mr. Jacobs	....	X
Mrs. Johnson	X	....	Mr. Ford	....	X
Mr. Bunning	X	....	Mr. Matsui	....	X
Mr. Houghton	X	....	Mrs. Kennelly	....	X
Mr. Herger	X	....	Mr. Coyne	....	X
Mr. McCrery	X	....	Mr. Levin	....	X
Mr. Hancock	X	....	Mr. Cardin	....	X
Mr. Camp	X	....	Mr. McDermott	....	X
Mr. Ramstad	X	....	Mr. Kleczka	....	X
Mr. Zimmer	X	....	Mr. Lewis	....	X
Mr. Nussle	X	....	Mr. Payne	....	X
Mr. Johnson	X	....	Mr. Neal	....	X
Ms. Dunn	X	....			
Mr. Collins	X	....			

Representatives	Aye	Nay	Representatives	Aye	Nay
Mr. Portman	X	....			
Mr. Laughlin	X	....			
Mr. English	X	....			
Mr. Ensign	X	....			
Mr. Christensen	X	....			

Motion on chairman's amendment

The committee approved Chairman Archer's amendment to titles XIII and XIV, as amended, in the nature of a substitute to the original draft of titles XIII and XIV by a rollcall vote of 22 yeas and 15 nays. The vote was as follows:

Representatives	Aye	Nay	Representatives	Aye	Nay
Mr. Archer	X	....	Mr. Gibbons	....	X
Mr. Crane	X	....	Mr. Rangel	....	X
Mr. Thomas	X	....	Mr. Stark	....	X
Mr. Shaw	X	....	Mr. Jacobs	....	X
Mrs. Johnson	X	....	Mr. Ford	....	X
Mr. Bunning	X	....	Mr. Matsui	....	X
Mr. Houghton	X	....	Mrs. Kennelly	....	X
Mr. Herger	X	....	Mr. Coyne	....	X
Mr. McCrery	X	....	Mr. Levin	....	X
Mr. Hancock	X	....	Mr. Cardin	....	X
Mr. Camp	X	....	Mr. McDermott	....	X
Mr. Ramstad	X	....	Mr. Kleczka	....	X
Mr. Zimmer	X	....	Mr. Lewis	....	X
Mr. Nussle	X	....	Mr. Payne	....	X
Mr. Johnson	X	....	Mr. Neal	....	X
Ms. Dunn	X	....			
Mr. Collins	X	....			
Mr. Portman	X	....			
Mr. Laughlin	X	....			
Mr. English	X	....			
Mr. Ensign	X	....			
Mr. Christensen	X	....			

Votes on Amendments

Roll call votes were conducted on the following amendments to the Chairman's substitute markup amendment.

An amendment by Mr. Kleczka to delete the title XIII provision relating to transfer of excess pension assets and replace it with a disallowance of any "neutral cost recovery" depreciation deduction system was defeated by a rollcall vote of 16 yeas and 20 nays. The vote was as follows:

Representatives	Aye	Nay	Representatives	Aye	Nay
Mr. Archer	....	X	Mr. Gibbons	X	....
Mr. Crane	....	X	Mr. Rangel	X	....
Mr. Thomas	....	X	Mr. Stark	X	....
Mr. Shaw	....	X	Mr. Jacobs	X	....
Mrs. Johnson	....	X	Mr. Ford	X	....
Mr. Bunning	....	X	Mr. Matsui	X	....
Mr. Houghton	....	X	Mrs. Kennelly	X	....
Mr. Herger	....	....	Mr. Coyne	X	....
Mr. McCrery	....	X	Mr. Levin	X	....
Mr. Hancock	....	X	Mr. Cardin	X	....
Mr. Camp	....	X	Mr. McDermott	X	....
Mr. Ramstad	....	X	Mr. Kleczka	X	....
Mr. Zimmer	....	X	Mr. Lewis	X	....
Mr. Nussle	....	X	Mr. Payne	X	....

Representatives	Aye	Nay	Representatives	Aye	Nay
Mr. Johnson	....	X	Mr. Neal	X	....
Ms. Dunn	....	X			
Mr. Collins	....	X			
Mr. Portman	....	X			
Mr. Laughlin	....	X			
Mr. English	....	X			
Mr. Ensign	X	....			
Mr. Christensen	....	X			

An amendment by Mr. Kleczka to title XIII to require that pension plan participants receive reasonable advance notice of withdrawal of excess pension assets was defeated by a rollcall vote of 17 yeas and 20 nays. The vote was as follows:

Representatives	Aye	Nay	Representatives	Aye	Nay
Mr. Archer	....	X	Mr. Gibbons	X	....
Mr. Crane	....	X	Mr. Rangel	X	....
Mr. Thomas	....	X	Mr. Stark	X	....
Mr. Shaw	X	....	Mr. Jacobs	X	....
Mrs. Johnson	....	X	Mr. Ford	X	....
Mr. Bunning	....	X	Mr. Matsui	X	....
Mr. Houghton	....	X	Mrs. Kennelly	X	....
Mr. Herger	....	X	Mr. Coyne	X	....
Mr. McCrery	....	X	Mr. Levin	X	....
Mr. Hancock	....	X	Mr. Cardin	X	....
Mr. Camp	....	X	Mr. McDermott	X	....
Mr. Ramstad	....	X	Mr. Kleczka	X	....
Mr. Zimmer	....	X	Mr. Lewis	X	....
Mr. Nussle	....	X	Mr. Payne	X	....
Mr. Johnson	....	X	Mr. Neal	X	....
Ms. Dunn	....	X			
Mr. Collins	....	X			
Mr. Portman	....	X			
Mr. Laughlin	....	X			
Mr. English	X	....			
Mr. Ensign	....	X			
Mr. Christensen	....	X			

An amendment by Mr. Cardin to title XIII to require use of interest rate and mortality assumptions for the excess pension plan assets as applicable to plans with unfunded current liabilities was defeated by a rollcall vote of 16 yeas and 21 nays. The vote was as follows:

Representatives	Aye	Nay	Representatives	Aye	Nay
Mr. Archer	....	X	Mr. Gibbons	X	....
Mr. Crane	....	X	Mr. Rangel	X	....
Mr. Thomas	....	X	Mr. Stark	X	....
Mr. Shaw	....	X	Mr. Jacobs	X	....
Mrs. Johnson	....	X	Mr. Ford	X	....
Mr. Bunning	....	X	Mr. Matsui	X	....
Mr. Houghton	X	....	Mrs. Kennelly	X	....
Mr. Herger	....	X	Mr. Coyne	X	....
Mr. McCrery	....	X	Mr. Levin	X	....
Mr. Hancock	....	X	Mr. Cardin	X	....
Mr. Camp	....	X	Mr. McDermott	X	....
Mr. Ramstad	....	X	Mr. Kleczka	X	....
Mr. Zimmer	....	X	Mr. Lewis	X	....
Mr. Nussle	....	X	Mr. Payne	X	....
Mr. Johnson	....	X	Mr. Neal	X	....
Ms. Dunn	....	X			
Mr. Collins	....	X			

Representatives	Aye	Nay	Representatives	Aye	Nay
Mr. Portman	....	X			
Mr. Laughlin	....	X			
Mr. English	....	X			
Mr. Ensign	....	X			
Mr. Christensen	....	X			

An amendment by Mr. Rangel and Mrs. Kennelly to title XIII to replace the sunset of the low-income housing tax credit with a disallowance of any "neutral cost recovery" depreciation deduction system was defeated by a rollcall vote of 15 yeas and 22 nays. The vote was as follows:

Representatives	Aye	Nay	Representatives	Aye	Nay
Mr. Archer	....	X	Mr. Gibbons	X	....
Mr. Crane	....	X	Mr. Rangel	X	....
Mr. Thomas	....	X	Mr. Stark	X	....
Mr. Shaw	....	X	Mr. Jacobs	X	....
Mrs. Johnson	....	X	Mr. Ford	X	....
Mr. Bunning	....	X	Mr. Matsui	X	....
Mr. Houghton	....	X	Mrs. Kennelly	X	....
Mr. Herger	....	X	Mr. Coyne	X	....
Mr. McCrery	....	X	Mr. Levin	X	....
Mr. Hancock	....	X	Mr. Cardin	X	....
Mr. Camp	....	X	Mr. McDermott	X	....
Mr. Ramstad	....	X	Mr. Kleczka	X	....
Mr. Zimmer	....	X	Mr. Lewis	X	....
Mr. Nussle	....	X	Mr. Payne	X	....
Mr. Johnson	....	X	Mr. Neal	X	....
Ms. Dunn	....	X			
Mr. Collins	....	X			
Mr. Portman	....	X			
Mr. Laughlin	....	X			
Mr. English	....	X			
Mr. Ensign	....	X			
Mr. Christensen	....	X			

An amendment by Mr. Ford to title XIII to strike section 13637 (to repeal the tax credit for contributions to community development corporations) was defeated by a rollcall vote of 15 yeas and 21 nays. The vote was as follows:

Representatives	Aye	Nay	Representatives	Aye	Nay
Mr. Archer	....	X	Mr. Gibbons	X	....
Mr. Crane	....	X	Mr. Rangel	X	....
Mr. Thomas	....	X	Mr. Stark	X	....
Mr. Shaw	....	X	Mr. Jacobs	....	....
Mrs. Johnson	....	X	Mr. Ford	X	....
Mr. Bunning	....	X	Mr. Matsui	X	....
Mr. Houghton	X	....	Mrs. Kennelly	X	....
Mr. Herger	....	X	Mr. Coyne	X	....
Mr. McCrery	....	X	Mr. Levin	X	....
Mr. Hancock	....	X	Mr. Cardin	X	....
Mr. Camp	....	X	Mr. McDermott	X	....
Mr. Ramstad	....	X	Mr. Kleczka	X	....
Mr. Zimmer	....	X	Mr. Lewis	X	....
Mr. Nussle	....	X	Mr. Payne	X	....
Mr. Johnson	....	X	Mr. Neal	X	....
Ms. Dunn	....	X			
Mr. Collins	....	X			
Mr. Portman	....	X			
Mr. Laughlin	....	X			
Mr. English	....	X			

Representatives	Aye	Nay	Representatives	Aye	Nay
Mr. Ensign	....	X			
Mr. Christensen	....	X			

An amendment by Mr. Kleczka to title XIII to strike section 13631 (to tax certain Indian gaming activities) and to disallow any "neutral cost recovery" depreciation deduction system was defeated by a rollcall vote of 10 yeas and 26 nays. The vote was as follows:

Representatives	Aye	Nay	Representatives	Aye	Nay
Mr. Archer	....	X	Mr. Gibbons	X	....
Mr. Crane	....	X	Mr. Rangel	X	....
Mr. Thomas	....	X	Mr. Stark	X	....
Mr. Shaw	....	X	Mr. Jacobs	....	....
Mrs. Johnson	....	X	Mr. Ford	....	X
Mr. Bunning	....	X	Mr. Matsui	X	....
Mr. Houghton	....	X	Mrs. Kennelly	X	....
Mr. Herger	....	X	Mr. Coyne	X	....
Mr. McCrery	....	X	Mr. Levin	....	X
Mr. Hancock	....	X	Mr. Cardin	....	X
Mr. Camp	....	X	Mr. McDermott	X	....
Mr. Ramstad	....	X	Mr. Kleczka	X	....
Mr. Zimmer	....	X	Mr. Lewis	X	....
Mr. Nussle	....	X	Mr. Payne	....	X
Mr. Johnson	....	X	Mr. Neal	X	....
Ms. Dunn	....	X			
Mr. Collins	....	X			
Mr. Portman	....	X			
Mr. Laughlin	....	X			
Mr. English	....	X			
Mr. Ensign	....	X			
Mr. Christensen	....	X			

An amendment by Mrs. Kennelly to title XIII to strike sections 13701 and 13702 (to retain the earned income tax credit for individuals without children and to delete the modification to the EITC phaseout and AGI) was defeated by a rollcall vote of 14 yeas and 22 nays. The vote was as follows:

Representatives	Aye	Nay	Representatives	Aye	Nay
Mr. Archer	....	X	Mr. Gibbons	X	....
Mr. Crane	....	X	Mr. Rangel	X	....
Mr. Thomas	....	X	Mr. Stark	....	....
Mr. Shaw	....	X	Mr. Jacobs	X	....
Mrs. Johnson	....	X	Mr. Ford	X	....
Mr. Bunning	....	X	Mr. Matsui	X	....
Mr. Houghton	....	X	Mrs. Kennelly	X	....
Mr. Herger	....	X	Mr. Coyne	X	....
Mr. McCrery	....	X	Mr. Levin	X	....
Mr. Hancock	....	X	Mr. Cardin	X	....
Mr. Camp	....	X	Mr. McDermott	X	....
Mr. Ramstad	....	X	Mr. Kleczka	X	....
Mr. Zimmer	....	X	Mr. Lewis	X	....
Mr. Nussle	....	X	Mr. Payne	X	....
Mr. Johnson	....	X	Mr. Neal	X	....
Ms. Dunn	....	X			
Mr. Collins	....	X			
Mr. Portman	....	X			
Mr. Laughlin	....	X			
Mr. English	....	X			
Mr. Ensign	....	X			
Mr. Christensen	....	X			

An amendment by Mr. Cardin to title XIII to remove the increase in the EITC phaseout was defeated by a rollcall vote of 14 yeas and 22 nays. The vote was as follows:

Representatives	Aye	Nay	Representatives	Aye	Nay
Mr. Archer	....	X	Mr. Gibbons	X	....
Mr. Crane	....	X	Mr. Rangel	X	....
Mr. Thomas	....	X	Mr. Stark	....	....
Mr. Shaw	....	X	Mr. Jacobs	X	....
Mrs. Johnson	....	X	Mr. Ford	X	....
Mr. Bunning	....	X	Mr. Matsui	X	....
Mr. Houghton	....	X	Mrs. Kennelly	X	....
Mr. Herger	....	X	Mr. Coyne	X	....
Mr. McCrery	....	X	Mr. Levin	X	....
Mr. Hancock	....	X	Mr. Cardin	X	....
Mr. Camp	....	X	Mr. McDermott	X	....
Mr. Ramstad	....	X	Mr. Kleczka	X	....
Mr. Zimmer	....	X	Mr. Lewis	X	....
Mr. Nussle	....	X	Mr. Payne	X	....
Mr. Johnson	....	X	Mr. Neal	X	....
Ms. Dunn	....	X			
Mr. Collins	....	X			
Mr. Portman	....	X			
Mr. Laughlin	....	X			
Mr. English	....	X			
Mr. Ensign	....	X			
Mr. Christensen	....	X			

An amendment by Mr. Levin to title XIII to strike section 13702 (remove the modifications to AGI for the EITC phaseout) and replace it with a disallowance of any "neutral cost recovery" depreciation deduction system as defeated by a rollcall vote of 15 yeas and 22 nays. The vote was as follows:

Representatives	Aye	Nay	Representatives	Aye	Nay
Mr. Archer	....	X	Mr. Gibbons	X	....
Mr. Crane	....	X	Mr. Rangel	X	....
Mr. Thomas	....	X	Mr. Stark	X	....
Mr. Shaw	....	X	Mr. Jacobs	X	....
Mrs. Johnson	....	X	Mr. Ford	X	....
Mr. Bunning	....	X	Mr. Matsui	X	....
Mr. Houghton	....	X	Mrs. Kennelly	X	....
Mr. Herger	....	X	Mr. Coyne	X	....
Mr. McCrery	....	X	Mr. Levin	X	....
Mr. Hancock	....	X	Mr. Cardin	X	....
Mr. Camp	....	X	Mr. McDermott	X	....
Mr. Ramstad	....	X	Mr. Kleczka	X	....
Mr. Zimmer	....	X	Mr. Lewis	X	....
Mr. Nussle	....	X	Mr. Payne	X	....
Mr. Johnson	....	X	Mr. Neal	X	....
Ms. Dunn	....	X			
Mr. Collins	....	X			
Mr. Portman	....	X			
Mr. Laughlin	....	X			
Mr. English	....	X			
Mr. Ensign	....	X			
Mr. Christensen	....	X			

An amendment by Mr. Rangel to title XIII to retain the earned income tax credit for individuals without children was defeated by a rollcall vote of 15 yeas and 22 nays. The vote was as follows:

Representatives	Aye	Nay	Representatives	Aye	Nay
Mr. Archer	....	X	Mr. Gibbons	X	....
Mr. Crane	....	X	Mr. Rangel	X	....
Mr. Thomas	....	X	Mr. Stark	X	....
Mr. Shaw	....	X	Mr. Jacobs	X	....
Mrs. Johnson	....	X	Mr. Ford	X	....
Mr. Bunning	....	X	Mr. Matsui	X	....
Mr. Houghton	....	X	Mrs. Kennelly	X	....
Mr. Herger	....	X	Mr. Coyne	X	....
Mr. McCrery	....	X	Mr. Levin	X	....
Mr. Hancock	....	X	Mr. Cardin	X	....
Mr. Camp	....	X	Mr. McDermott	X	....
Mr. Ramstad	....	X	Mr. Kleczka	X	....
Mr. Zimmer	....	X	Mr. Lewis	X	....
Mr. Nussle	....	X	Mr. Payne	X	....
Mr. Johnson	....	X	Mr. Neal	X	....
Ms. Dunn	....	X			
Mr. Collins	....	X			
Mr. Portman	....	X			
Mr. Laughlin	....	X			
Mr. English	....	X			
Mr. Ensign	....	X			
Mr. Christensen	....	X			

An amendment by Mr. Hancock to title XIII to repeal the reachback provisions of the coal industry retiree health benefit program was approved by a rollcall vote of 20 yeas and 17 nays. The vote was as follows:

Representatives	Aye	Nay	Representatives	Aye	Nay
Mr. Archer	X	....	Mr. Gibbons	X	....
Mr. Crane	....	X	Mr. Rangel	....	X
Mr. Thomas	X	....	Mr. Stark	....	X
Mr. Shaw	X	....	Mr. Jacobs	....	X
Mrs. Johnson	X	....	Mr. Ford	....	X
Mr. Bunning	....	X	Mr. Matsui	....	X
Mr. Houghton	....	X	Mrs. Kennelly	X	....
Mr. Herger	X	....	Mr. Coyne	....	X
Mr. McCrery	X	....	Mr. Levin	....	X
Mr. Hancock	X	....	Mr. Cardin	....	X
Mr. Camp	X	....	Mr. McDermott	....	X
Mr. Ramstad	X	....	Mr. Kleczka	....	X
Mr. Zimmer	X	....	Mr. Lewis	....	X
Mr. Nussle	X	....	Mr. Payne	....	X
Mr. Johnson	X	....	Mr. Neal	....	X
Ms. Dunn	X	....			
Mr. Collins	X	....			
Mr. Portman	X	....			
Mr. Laughlin	X	....			
Mr. English	....	X			
Mr. Ensign	X	....			
Mr. Christensen	X	....			

BUDGET EFFECTS OF TITLES XIII AND XIV, BY SUBTITLE

[By fiscal years, in billions of dollars]

	1996	1997	1998	1999	2000	2001	2002
TITLE XII							
Subtitle A: Expiring Provisions							
Revenue Effects:							
On-Budget	−2.213	−2.473	−1.434	−0.621	−0.382	−0.191	−0.045
Off-Budget [1]	−0.233	−0.159	−0.098	0.000	0.000	0.000	0.000
Subtitle B: Medical Savings Accounts							

BUDGET EFFECTS OF TITLES XIII AND XIV, BY SUBTITLE—Continued

[By fiscal years, in billions of dollars]

	1996	1997	1998	1999	2000	2001	2002
Revenue Effects	−0.117	−0.197	−0.233	−0.268	−0.306	−0.321	−0.337
Subtitle C: Taxpayer Bill of Rights 2							
Revenue Effects	−0.012	−0.095	−0.099	−0.100	−0.027	−0.030	−0.030
Subtitle D: Additional Technical Corrections							
Revenue Effects	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Subtitle E: Information Sharing Provision							
Revenue Effects	0.000	0.000	0.000	−0.014	−0.028	−0.042	−0.056
Subtitle F: Corporate and Other Reforms [2]							
Revenue Effects	2.893	3.907	4.104	4.107	4.295	4.992	5.929
Subtitle G: EITC Reform							
Revenue Effects	0.039	0.781	0.824	0.857	0.895	0.950	1.071
Outlay Effects	−0.131	−2.636	−2.779	−2.897	−3.045	−3.159	−3.197
Subtitle H: Extension of Debt Ceiling							
Revenue Effects	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Outlay Effects	0.000	0.000	0.000	0.000	0.000	0.000	0.000
TITLE XIV							
Tax Simplification							
Revenue Effects	−0.157	−0.646	−0.865	−0.717	−0.733	−0.769	−0.839

[1] Extending the exclusion for employer-provided educational assistance would reduce Social Security revenues, which are off-budget.

[2] One provision, to modify the tax benefits available to certain alcohol fuels, might also affect outlays. Because it depends on other action taken during reconciliation regarding farm programs, the effect can not be estimated at this time.

BUDGET EFFECTS OF TITLES XIII AND XIV

[By fiscal years, in billions of dollars]

	1996	1997	1998	1999	2000	2001	2002
Revenues							
Projected Revenues Under Current Law [1]	1417.619	1475.210	1546.076	1617.969	1697.155	1786.321	1879.300
Proposed Changes:							
On Budget	0.433	1.277	2.297	3.258	3.742	4.631	5.749
Off Budget	−0.233	−0.159	−0.098	0.000	0.000	0.000	0.000
Projected Revenues Under Titles XIII and XIV	1417.819	1476.328	1548.275	1621.227	1700.897	1790.952	1885.049
Outlays							
Projected EITC Outlays[1] Under Current Law	20.374	22.551	23.483	24.512	25.553	26.499	27.517
Proposed Changes	−0.131	−2.636	−2.779	−2.897	−3.045	−3.159	−3.197
Projected EITC Outlays Under Title XIII	20.243	19.915	20.704	21.615	22.508	23.340	24.320
Projected Veterans Pension Outlays Under Current Law	2.599	2.714	2.604	2.776	3.013	2.569	2.789
Proposed Changes	0.000	0.000	0.000	−0.010	−0.020	−0.030	−0.040
Projected Veterans Pension Outlays Under Title XIII	2.599	2.714	2.604	2.766	2.993	2.539	2.749
Projected Medical Care Cost Recovery Under Current Law	−0.641	−0.731	−0.758	−0.372	−0.380	−0.400	−0.422
Proposed Changes	0.000	0.000	0.000	−0.004	−0.008	−0.012	−0.016
Projected Medical Care Cost Recovery Under Title XIII	−0.641	−0.731	−0.758	−0.376	−0.388	−0.412	−0.438

[1] Includes the effects of Public Law 104–7 (H.R. 831).

IV. Budget Effects of Titles XIII and XIV

A. Committee Estimates of Budgetary Effects

In compliance with clause 7 of Rule III of Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the Committee on Ways and Means revenue reconciliation (title XIII) and tax simplification (title XIV) provisions.

Titles XIII and XIV are estimated to have the following effects on budget receipts for fiscal years 1996–2002:

ESTIMATED BUDGET EFFECTS OF RECONCILIATION PROVISIONS (TITLES XIII AND XIV) AS APPROVED BY THE COMMITTEE ON WAYS AND MEANS

[Fiscal years 1996–2002; in millions of dollars]

Item	Effective	1996	1997	1998	1999	2000	2001	2002	1996–00	1996–02
TITLE XIII. REVENUE RECONCILIATION ACT										
I. Expiring Provisions										
A. Provisions Extended Through 12/31/97:										
1. Work opportunity tax credit [1]	1/1/96	−64	−173	−176	−93	−36	−12	−2	−542	−556
2. Employer-provided educational assistance (for undergraduate education after 12/31/95).	1/1/95	−731	−500	−307					−1,538	−1,538
3. R&D credit with modifications	7/1/95	−1,149	−1,389	−1,013	−518	−343	−176	−40	−4,412	−4,628
4. Contributions of appreciated stock to private foundations	1/1/95	−47	−108	−20	−7				−182	−182
5. Orphan drug tax credit	1/1/95	−33	−20	−7					−60	−60
B. Permanent Extension of FUTA exemption for alien agricultural workers [2]	1/1/95	−5	−3	−3	−3	−3	−3	−3	−17	−23
C. Commercial Aviation Fuel: extend 4.3 cents/gallon exemption through 9/30/97	10/1/95	−417	−439	−6					−863	−863
D. Extend all Airport and Airway Trust Fund excise taxes through 9/30/96 [3]	1/1/96	No Revenue Effect								
Total for expiring provisions		−2,446	−2,632	−1,532	−621	−191	−382	−45	−7,614	−7,850
II. Medical Savings Accounts	1/1/96	−117	−197	−233	−268	−306	−321	−337	−1,121	−1,779
III. Taxpayer Bill of Rights 2										
1. Establishment of position of Taxpayer Advocate	DOE	No Revenue Effect								
2. Expansion of authority to issue Taxpayer Assistance Orders	DOE	No Revenue Effect								
3. Notification of reasons for termination of installment agreements	6ma DOE	No Revenue Effect								
4. Administrative review of termination of installment agreements	1/1/96	No Revenue Effect								
5. Expansion of authority to abate interest	DOE	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(5)	(5)
6. Review of IRS failure to abate interest	DOE	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(5)	(5)
7. Extension of interest-free period for payment of tax	6/30/96	−2	−7	−8	−8	−8	−9	−9	−33	−51
8. Studies of Joint return-related issues	DOE	No Revenue Effect								
9. Joint return may be made after separate returns without full payment of tax	DOE	(4)	(4	(4)	(4)	(4)	(4)	(4)	(5)	(5)
10. Disclosure of collection activities	DOE	No Revenue Effect								
11. Withdraw notice of lien	1/1/96	No Revenue Effect								
12. Return levied property	1/1/96	No Revenue Effect								
13. Increase levy exemption	1/1/96	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(5)	(5)
14. Offers-in-compromise	DOE	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(5)	(5)
15. Civil damages for fraudulent filing of information return	DOE	No Revenue Effect								
16. Requirement to conduct reasonable investigation	DOE	−3	−6	−6	−6	−7	−8	−8	−28	−44

17. United States must establish that position in proceeding was substantially justified.	DOE	−2	−2	−2	−3	−3	−3	−3	−12	−18
18. Increased limit on attorney fees	DOE	−1	−1	−1	−1	−1	−1	−1	−5	−7
19. Failure to agree to extension not taken into account	DOE					No Revenue Effect				
20. Award of litigation costs permitted in declaratory judgment proceedings	DOE	[4]	[4]	[4]	[4]	[4]	[4]	[4]	[5]	[5]
21. Increase in limit on recovery of civil damages	DOE	−3	−3	−3	−3	−3	−3	−3	−15	−21
22. Court discretion to reduce award for litigation costs	DOE	−1	−1	−1	−1	−1	−1	−1	−5	−7
23. Preliminary notice requirement	6/30/96					No Revenue Effect				
24. Disclosure of certain information where more than one person liable for penalty	DOE					No Revenue Effect				
25. Right of contribution where more than one person liable for penalty	DOE					No Revenue Effect				
26. Volunteer board members of tax-exempt organizations exempt from penalty	DOE					No Revenue Effect				
27. Enrolled agents included as third-party recordkeepers	DOE	[4]	[4]	[4]	[4]	[4]	[4]	[4]	[5]	[5]
28. Safeguards relating to designated summonses	DOE	[4]	[4]	[4]	[4]	[4]	[4]	[4]	[5]	[5]
29. Report on designated summonses	DOE					No Revenue Effect				
30. Relief from retroactive application of Treasury Department regulations	DOE	....	−1	−4	−4	−4	−5	−5	−13	−23
31. Report on pilot program for appeal of enforcement actions	DOE					No Revenue Effect				
32. Phone number of person providing payee statements	1/1/97					No Revenue Effect				
33. Required notice of certain payments	DOE					No Revenue Effect				
34. Unauthorized enticement of information disclosure	DOE					No Revenue Effect				
35. Annual reminders to taxpayers with delinquent accounts	1/1/96	[6]	[6]	[6]	[6]	[6]	[6]	[6]	[7]	[7]
36. 5-year extension of authority for undercover operations	DOE	[6]	[6]	[6]	[6]	[6]	[6]	[6]	[7]	[7]
37. Disclosure of form 8300 information	DOE					No Revenue Effect				
38. Disclosure of returns and return information to designee of taxpayer	DOE					No Revenue Effect				
39. Study of netting of interest on overpayments and liabilities	DOE					No Revenue Effect				
40. Provide tax credit for Taxpayer Compliance Measurement Program for individual taxpayers.	tyba 12/31/94	....	−74	−74	−74	....	....	....	−222	−222
41. Expenses of detection of underpayments and fraud	DOE					Negligible Revenue Effect				
Total of Taxpayer Bill of Rights 2	....	−12	−95	−99	−100	−27	−30	−30	−333	−393
IV. Additional Technical Corrections	....	....	....	....	....	....	....	....	....	....
V. Information Sharing Provision: Extension of Disclosure of Return Information to Department of Veterans Affairs (outlay reductions) (2).	....	....	....	....	7	17	27	37	24	88
VI. Corporate and Other Reforms										
1. Reform the tax treatment of certain corporate stock redemptions	5/4/95	−576	−481	−295	−57	238	505	643	−1,171	−23
2. Require corporate tax shelter reporting	atsotppa DOE	[7]	[7]	[7]	[7]	[7]	[7]	[7]	[8]	[8]
3. Disallow interest deduction for corporate-owned life insurance policy loans	ipoaa 12/31/95	192	517	802	1,094	1,354	1,506	1,550	3,959	7,016

ESTIMATED BUDGET EFFECTS OF RECONCILIATION PROVISIONS (TITLES XIII AND XIV) AS APPROVED BY THE COMMITTEE ON WAYS AND MEANS—Continued

[Fiscal years 1996–2002; in millions of dollars]

Item	Effective	1996	1997	1998	1999	2000	2001	2002	1996–00	1996–02
4. Phaseout preferential tax deferral for certain large farm corporations required to use accrual accounting.	(9)	26	37	38	39	40	41	42	179	261
5. Phased-in repeal of section 936	tyba 12/31/95	31	92	258	447	586	737	951	1,414	3,102
6. Corporate accounting—reform of income forecast method	ppisa 9/13/95	34	73	31	14	15	17	20	167	204
7. Corporate pension reversions	1/1/95	2,814	2,585	2,329	1,356	491	(10)	(10)	9,575	9,538
8. Modify exclusion of damages received on account of personal injury or sickness:										
a. Treat all punitive damages as taxable	ama 12/31/95	3	4	6	7	7	7	8	27	42
b. Include in income damage recoveries for nonphysical injuries	ama 12/31/95	31	47	49	52	54	57	60	233	350
9. Require tax reporting for payments to attorneys	1/1/96	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(8)	(8)
10. Expatriation tax provisions	2/6/95	64	97	146	199	254	289	304	760	1,353
11. Phase-out of tax credits for wind energy and ''closed loop'' biomass	tyea 9/13/95	....	9	19	28	34	35	37	90	162
12. Ethanol: Reduce blenders' tax subsidy from $0.54 to $0.51 per gallon to remove implicit subsidy for carbon dioxide; limit blenders' tax subsidy to plants in service before 9/14/95, not to exceed average production during the 3-year period ending 8/31/95 (exempting small producers); include excise tax compliance measures; reverse IRS regulations on ETBE as qualified alcohol fuel, and raise small producer credit from $0.10 to $0.13 per gallon.	1/1/96	128	183	174	178	186	411	522	851	1,784
13. Remove business exclusion for energy subsidies provided by public utilities	ara 9/13/95	54	96	100	104	107	109	111	461	679
14. Modify basis adjustment rules under section 1033	ica 9/13/95	2	4	7	11	16	23	31	40	94
15. Modify the exception to the related party rule of section 1033 for individuals to only provide an exception for de minimis amounts ($100,000).	ica 9/13/95	1	2	4	7	10	13	15	24	52
16. Disallow rollover under section 1034 to extent of previously claimed depreciation for home office or other depreciable use of residence.	tyea 12/31/95	1	3	4	5	6	8	9	19	35
17. Provide that rollover of gain on sale of a principal residence cannot be elected unless the replacement property purchased is located within the United States (limit to resident aliens who terminate residence within 2 years).	sea 9/13/95	(11)	(11)	(11)	(11)	(11)	(11)	(11)	(11)	(11)
18. Tax gambling income of Indian tribes; repeal of targeted exemption from UBIT from gambling in certain States.	1/1/96	28	50	52	52	53	54	56	235	345
19. Repeal exemption for withholding on gambling winnings from bingo and keno, where proceeds exceed $5,000.	1/1/96	20	6	6	6	6	7	7	45	58
20. Sunset the low-income housing tax credit after 12/31/97	DOE	−24	−29	64	333	674	1,046	1,431	1,018	3,494
21. Repeal tax credit for contributions to special Community Development Corporations.	DOE	1	1	2	2	2	2	2	8	12

22. Repeal advance refunds of diesel fuel tax for diesel cars and light trucks	1/1/96	8	19	19	19	19	19	19	84	122
23. Apply failure to pay penalty to substitute returns	DOE	1	3	29	30	32	33	35	95	163
24. Repeal section 280A(g) (clarify that there is no basis adjustment required if depreciation is not claimed).	typa 12/31/95	11	22	23	23	24	26	27	103	155
25. Allow conversion of scholarship funding corporation to taxable corporation	DOE	3	4	6	8	10	10	9	30	48
26. Apply look-through rule for purposes of characterizing certain subpart F insurance income as UBIT.	gira 12/31/95	7	23	24	27	30	32	34	111	177
27. Intermediate sanctions for certain tax-exempt organizations	9/13/95	4	4	4	5	5	5	6	22	33
Total for Corporate and Other Reforms		2,864	3,371	3,901	3,989	4,253	4,992	5,929	18,379	29,256
VII. EITC Reforms										
1. Modify AGI for the EITC to include nontaxable Social Security benefits and nontaxable distributions of IRA's, pension, and annuities:										
a. Revenue	tyba 12/31/95	10	201	215	219	199	246	268	843	1,357
b. Outlay reductions	tyba 12/31/95	57	1,152	1,225	1,284	1,388	1,412	1,415	5,107	7,934
2. Restrict EITC eligibility to individuals with qualifying children:										
a. Revenue	tyba 12/31/95	4	89	93	97	100	107	112	382	601
b. Outlay reductions	tyba 12/31/95	27	535	557	583	610	631	658	2,313	3,602
3. Increase the EITC phaseout rate to 18 percent for individuals with one qualifying child and 23 percent for individuals with two or more qualifying children:										
a. Revenue	tyba 12/31/95	30	604	637	667	698	743	783	2,636	4,162
b. Outlay reductions	tyba 12/31/95	33	659	692	723	765	805	846	2,874	4,523
4. Require Social Security numbers for primary and secondary taxpayers, and treat omission of a correct Social Security number and underpayment of SECA as a math error:										
a. Revenue	tyba 12/31/95	1	28	29	29	30	30	31	117	178
b. Outlay reductions	tyba 12/31/95	10	224	232	236	242	245	251	945	1,441
Total of EITC Revenue [12]		39	781	824	857	895	950	1,071	3,397	5,423
Total of EITC Outlay [12]		131	2,636	2,779	2,897	3,045	3,159	3,197	11,489	17,845
VIII. Extension of Debt Ceiling										
IX. Coal Industry Retiree Health Equity	10/1/95	Negligible Revenue Effect								
TITLE XIV. TAX SIMPLIFICATION ACT										
I. Simplification Provisions Relating to Individuals										
1. Rollover of gain on sale of principal residence:										
a. Multiple sales within rollover period	s/a DOE	−1	−2	−2	−2	−2	−2	−3	−9	−14
b. Rules in case of divorce	s/a DOE	−2	−2	−2	−2	−3	−3	−3	−11	−17

ESTIMATED BUDGET EFFECTS OF RECONCILIATION PROVISIONS (TITLES XIII AND XIV) AS APPROVED BY THE COMMITTEE ON WAYS AND MEANS—Continued

[Fiscal years 1996–2002; in millions of dollars]

Item	Effective	1996	1997	1998	1999	2000	2001	2002	1996–00	1996–02
2. One-time exclusion on the sale of a principal residence by an individual who has attained age 55 (allow additional exclusion for married couples under certain conditions where one spouse has claimed an exclusion prior to their marriage).	s/a 9/13/95	−10	−19	−20	−21	−22	−23	−24	−92	−139
3. Permit payment of taxes by any commercially acceptable means	DOE+9 months	Negligible Revenue Effect								
4. Simplified foreign tax credit limitation for individuals	tyba 12/31/95	([13])	−1	−1	−1	−1	−1	−1	−4	−6
5. Treatment of personal transactions by individuals under foreign currency rules	tyba 12/31/95	([13])	([13])	([13])	([13])	([13])	([13])	([13])	−1	−1
6. Treatment of certain reimbursed expenses of rural mail carriers	tyba 12/31/95	([13])	−1	−1	−1	−1	−1	−1	−5	−7
7. Exclusion of combat pay from withholding limited to amount excludable from gross income.	r/a 12/31/95	No Revenue Effect								
8. Travel expenses of Federal employee participating in a Federal criminal investigation.	tyea DOE	([13])	([13])	([13])	([13])	([13])	([13])	([13])	−1	−1
II. Pension Simplification										
A. Simplified Distribution Rules:										
1. Sunset of 5-year income averaging for lump-sum distributions	tyba 12/31/95	4	13	23	36	44	46	48	119	213
2. Repeal of $5,000 exclusion of employees' death benefits	tyba 12/31/95	16	46	49	52	54	55	55	218	328
3. Simplified method for taxing annuity distributions under certain employer plans.	asda 12/31/95	([11])	2	4	4	6	6	6	16	28
4. Minimum required distributions	yba 12/31/95	−1	−4	−4	−4	−4	−4	−4	−17	−25
B. Increased Access to Pension Plans:										
1. Modifications of simplified employee pensions [SEP's]	yba 12/31/95	−12	−35	−36	−37	−38	−39	−40	−159	−238
2. State and local governments and tax-exempt organizations that do not maintain section 457 plans eligible under section 401(k).	pyba 12/31/96	....	−37	−89	−95	−98	−102	−105	−319	−526
C. Nondiscrimination Provisions:										
1. Simplified definition of highly compensated employees	yba 12/31/95	Considered in Other Provisions								
2. Repeal of family aggregation rules	yba 12/31/95	Considered in Other Provisions								
3. Modification of additional participation requirements	yba 12/31/95	Negligible Revenue Effect								
4. Safe-harbor nondiscrimination rules for qualified cash or deferred arrangements, matching contributions, and salary reduction SEP's.	yba 12/31/95	−52	−149	−154	−160	−165	−171	−177	−680	−1,028
D. Miscellaneous Pension Simplification:										
1. Treatment of leased employees	yba 12/31/95	Negligible Revenue Effect								
2. Plans covering self-employed individuals	yba 12/31/95	Negligible Revenue Effect								
3. Elimination of special vesting rule for multiemployer plans	pybo/a 1/1/96	([11])	−1	−1	−1	−1	−1	−1	−4	−6
4. Distributions under rural cooperative plans	da 12/31/95	Negligible Revenue Effect								

5. Treatment of governmental plans under section 415	tybo/a DOE	Negligible Revenue Effect								
6. Uniform retirement age	yba 12/31/95	Considered in Other Provisions								
7. Uniform penalty provision to apply to certain pension reporting requirements.	1/1/96	No Revenue Effect								
8. Contributions on behalf of disabled employees	yba 12/31/95	Negligible Revenue Effect								
9. Treatment of deferred compensation plans of State and local governments and tax-exempt organizations.	tyba 12/31/95	([13])	−1	−1	−1	−1	−2	−2	−4	−8
10. Require individual ownership of section 457 plan assets	1/1/96	−8	−22	−23	−24	−25	−25	−26	−101	−153
11. Correction of GATT interest and mortality rate provisions in the Retirement Protection Act.	eaii GATT	−4	−4	−4	−4	....	....	....	−16	−16
12. Multiple salary reduction agreements permitted under section 403(b)	tyba 12/31/95	Negligible Revenue Effect								
13. Repeal of combined plan limit (section 415(e))	lyba 12/31/96	....	−66	−178	−184	−189	−195	−201	−617	−1,012
14. Modify notice required of right to qualified joint and survivor annuity	pyba 12/31/95	Negligible Revenue Effect								
15. Date for adoption of plan amendments	DOE	No Revenue Effect								
III. Partnership Simplification Provisions										
A. General Provisions:										
1. Simplified reporting to partners and audit procedures for large partnerships.	tyba 12/31/95	7	8	9	9	9	10	10	42	62
2. Due date for furnishing information to partners of large partnerships	tyba 12/31/95	No Revenue Effect								
3. Returns required on magnetic media for partnerships with 100 partners or more.	tyba 12/31/95	Negligible Revenue Effect								
4. UBIT reporting exception for certain IRA income	tyba 12/31/95	No Revenue Effect								
B. Other Partnership Audit Rules		([13])	([13])	([13])	([13])	([13])	([13])	([13])	−1	−1
IV. Foreign Tax Simplification										
A. Modification of Passive Foreign Investment Company Provisions to Eliminate Overlap with Subpart F and to Allow Mark-to-Market Election.	tyba 12/31/95	−7	−18	−20	−21	−22	−24	−25	−88	−137
B. Modifications to Provisions Affecting Controlled Foreign Corporations:										
1. General provisions		−1	−2	−2	−3	−3	−3	−3	−11	−17
2. Repeal of excess passive assets provision (section 956A)	tyba 9/30/95	−17	−26	−29	−35	−41	−45	−51	−148	−244
C. Other Foreign Provisions:										
1. Exchange rate used in translating foreign taxes		([13])	([13])	([13])	([13])	([13])	([13])	([13])	([13])	([13])
2. Election to use simplified foreign tax credit limitation for alternative minimum tax.	tyba 12/31/95	([13])	([13])	([13])	([13])	([13])	([13])	([13])	−1	−1
3. Treatment of inbound and outbound transfers		−1	−2	−2	−2	−2	−2	−2	−9	−13
4. Application of uniform capitalization rules to foreign persons	tyba 12/31/95	−31	−87	−26	−15	−17	−19	−21	−176	−216
5. Modification of reporting threshold for stock ownership of a foreign corporation.	reoa 12/31/95	([13])	([13])	([13])	−1	−1	−2	−2	−2	−6

ESTIMATED BUDGET EFFECTS OF RECONCILIATION PROVISIONS (TITLES XIII AND XIV) AS APPROVED BY THE COMMITTEE ON WAYS AND MEANS—Continued

[Fiscal years 1996–2002; in millions of dollars]

Item	Effective	1996	1997	1998	1999	2000	2001	2002	1996–00	1996–02
6. Prizes and awards received by a nonresident alien relating to amateur sports competitions held in the United States.	DOE	([13])	([13])	([13])	([13])	([13])	([13])	([13])	([13])	([13])
7. Conform estate and income tax treatments of certain short-term OID obligations held by a nonresident alien.	DOE	Negligible Revenue Effect								
V. Other Income Tax Simplification Provisions										
A. Subchapter S Corporations:										
1. Increase number of eligible shareholders	tyba 12/31/95	−7	−12	−14	−16	−20	−22	−25	−69	−116
2. Permit certain trusts to hold stock in S corporations	tyba 12/31/95	−1	−2	−2	−2	−2	−2	−2	−9	−13
3. Extend holding period for certain trusts	tyba 12/31/95	([5])	([5])	([5])	([5])	([5])	([5])	([5])	([5])	([5])
4. Financial institutions permitted to hold safe-harbor debt	tyba 12/31/95	([13])	([13])	([13])	([13])	([13])	([13])	([13])	−1	−1
5. Authority to validate certain invalid elections	tyba 12/31/82	([13])	([13])	([13])	([13])	([13])	([13])	([13])	−1	−1
6. Allow interim closing of the books	tyba 12/31/95	Negligible Revenue Effect								
7. Expand post-termination period and amend subchapter S audit procedures.	tyba 12/31/95	([13])	([13])	([13])	([13])	([13])	([13])	([13])	−1	−1
8. S corporations permitted to hold S or C subsidiaries	tyba 12/31/95	−3	−7	−9	−11	−13	−15	−17	−43	−75
9. Treatment of distributions during loss years	tyba 12/31/95	([13])	([13])	([13])	([13])	([13])	([13])	([13])	−1	−1
10. Treatment of S corporations as shareholders in C corporations	tyba 12/31/95	([5])	([5])	([5])	([5])	([5])	([5])	([5])	([5])	([5])
11. Elimination of certain earnings and profits of S corporations	tyba 12/31/95	([5])	([5])	([5])	([5])	([5])	([5])	([5])	([5])	([5])
12. Treatment of certain losses carried over under at-risk rules	tyba 12/31/95	([5])	([5])	([5])	([5])	([5])	([5])	([5])	([5])	([5])
13. Adjustments to basis of inherited S stock	dda DOE	([6])	([6])	([6])	([6])	([6])	([6])	([6])	([6])	([6])
14. Treatment of certain real estate held by an S corporation	tyba 12/31/95	([13])	−1	−1	−2	−2	−2	−2	−6	−10
15. Transition rule for elections after terminaiton	tyba 12/31/95	([5])	([5])	([5])	([5])	([5])	([5])	([5])	([5])	([5])
16. Interaction of subchapter S changes		−3	−10	−26	−32	−37	−38	−39	−108	−185
B. Regulated Investment Companies [RIC's] and Real Estate Investment Trusts [REIT's]:										
1. Repeal of 30% gross income limitation for RIC's	tyba DOE	−9	−17	−20	−24	−28	−32	−35	−98	−164
2. Modification of rules for real estate investment trusts [REIT's]:										
a. Repeal 30% gross income test	tyba DOE	−4	−6	−7	−8	−9	−10	−11	−34	−55
b. Intermediate sanctions	tyba DOE	([14])	([14])	([14])	([14])	([14])	([14])	([14])	([15])	([15])
c. Phantom income exclusion from 95% distribution rule	tyba DOE	([14])	([14])	([14])	([14])	([14])	([14])	([14])	([15])	([15])
d. Other provisions	tyba DOE	Negligible Revenue Effect								
C. Accounting Provisions:										
1. Modifications to look-back method for long-term contracts	cc/tyea/E	−2	−3	−3	−3	−4	−4	−4	−15	−23
2. Allow traders to adopt mark-to-market accounting for securities	DOE	Negligible Revenue Effect								

3. Modification of Treasury ruling requirement for nuclear decommissioning funds.	tyba DOE	−4	−4	−5	−5	−5	−5	−5	−23	−33
4. Fiscal year election for partnerships and S corporations	tyba 12/31/96	....	−100	−200	−25	−10	−10	−10	−335	−355
5. Provide that a taxpayer may elect to include in income crop insurance proceeds and disaster payments in the year of the disaster or in the following year.	pra 12/31/95	7	−1	−1	−1	−1	−1	−1	3	1
D. Tax-Exempt Bond Provisions:										
1. Repeal of $100,000 limitation on unspent proceeds under 1-year exception from rebate.	bia DOE	−2	−3	−4	−4	−5	−8	−10	−18	−36
2. Exception from rebate for earnings on bona fide debt service fund under construction bond rules.	bia DOE	−1	−2	−2	−3	−3	−4	−8	−11	−23
3. Repeal of debt service-based limitation on investment in certain nonpurpose investments.	bia DOE	Negligible Revenue Effect								
4. Repeal of expired provisions affecting student loan bonds	DOE	No Revenue Effect								
E. Insurance Provisions:										
1. Treatment of certain insurance contracts on retired lives	tyba 12/31/95	6	−4	5	4	4	12	−7	16	21
2. Treatment of modified guaranteed contracts	tyba 12/31/95	−1	2	4	1	2	1	−1	8	8
3. Treatment of certain small property and casualty insurance companies under the alternative minimum tax.	tyba 12/31/95	−1	−2	−2	−2	−3	−3	−3	−11	−16
F. Other Provisions:										
1. Closing of partnership taxable year with respect to deceased partner	tyba 12/31/95	(13)	(13)	(13)	(13)	(13)	(13)	(13)	−1	−1
2. Modifications to the FICA tip credit	eaii OBRA	Negligible Revenue Effect								
3. Conform due date for first quarter estimated tax by private foundations	1/1/96	Negligible Revenue Effect								
4. Treatment of dues paid to agricultural or horticultural organizations	1/1/96	Negligible Revenue Effect								
VI. Estate, Gift, and Trust Tax Provisions										
A. Estate and Trust Income Tax Provisions:										
1. Certain revocable trusts treated as part of estate	DOE	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(16)	(16)
2. Distributions during the first 65 days of taxable year of estate	DOE	Negligible Revenue Effect								
3. Separate share rules available to estates	DOE	Negligible Revenue Effect								
4. Executor of estate and beneficiaries treated as related persons for disallowance of losses.	DOE	Negligible Revenue Effect								
5. Limitation on taxable year of estates	DOE	Negligible Revenue Effect								
6. Repeal of throwback rules applicable to domestic trusts	DOE	−8	−9	−10	−10	−10	−10	−10	−47	−67
7. Simplified taxation of earnings of pre-need funeral trusts	DOE	(11)	(11)	(11)	(11)	(11)	(11)	(11)	(7)	(7)
B. Estate and Gift Tax Provisions:										
1. Clarification of waiver of certain rights of recovery	DOE	Negligible Revenue Effect								
2. Adjustments for gifts within 3 years of decedent's death	DOE	....	−6	−6	−7	−7	−7	−7	−26	−40
3. Clarification of qualified terminable interest rules	DOE	Negligible Revenue Effect								
4. Transitional rule under section 2056A	DOE	Negligible Revenue Effect								

ESTIMATED BUDGET EFFECTS OF RECONCILIATION PROVISIONS (TITLES XIII AND XIV) AS APPROVED BY THE COMMITTEE ON WAYS AND MEANS—Continued

[Fiscal years 1996–2002; in millions of dollars]

Item	Effective	1996	1997	1998	1999	2000	2001	2002	1996–00	1996–02
5. Opportunity to correct certain failures under section 2032A	DOE	Negligible Revenue Effect								
6. Unified credit of decedent increased by unified credit of spouse used on split gift included in decedent's gross estate.	DOE	....	−9	−9	−10	−10	−11	−11	−38	−60
7. Reformation of defective bequests to spouse of decedent	DOE	....	−11	−11	−12	−13	−13	−14	−47	−74
8. Gifts may not be revalued for estate tax purposes after expiration of statute of limitations.	ga DOE		−15	−16	−16	−18	−21	−26	−65	−112
9. Clarifications relating to disclaimers	DOE		−2	−2	−2	−2	−3	−3	−8	−14
10. Clarify relationship between community property rights and retirement benefits.	DOE		−3	−4	−4	−4	−4	−4	−15	−23
11. Treatment under qualified domestic trust rules of forms of ownership which are not trusts.	DOE	Negligible Revenue Effect								
12. Authority to waive requirement of U.S. trustee for qualified domestic trusts.	DOE	No Revenue Effect								
C. Generation-Skipping Tax Provisions:										
1. Severing of trusts holding property having an inclusion ratio of greater than zero.	DOE		−5	−6	−6	−6	−6	−7	−23	−36
2. Clarification of who is transferor where subsequent gift by reason of power of appointment.	DOE	Negligible Revenue Effect								
3. Taxable termination not to include direct skips	DOE	Negligible Revenue Effect								
4. Modification of generation-skipping transfer tax for transfer to individuals with deceased parents.	DOE	−3	−4	−4	−4	−4	−4	−4	−19	−27
VII. Excise Tax Simplification										
A. Distilled Spirits, Wines, and Beer:										
1. Credit or refund for imported bottled distilled spirits returned to bonded premises.	fcq DOE+180 days	Negligible Revenue Effect								
2. Authority to cancel or credit export bonds without submission of records	fcq DOE+180 days	No Revenue Effect								
3. Repeal of required maintenance of records on premises of distilled spirits plant.	fcq DOE+180 days	No Revenue Effect								
4. Fermented material from any brewery may be received at a distilled spirits plant.	fcq DOE+180 days	Negligible Revenue Effect								
5. Repeal of requirement for wholesale dealers in liquors to post sign	DOE	No Revenue Effect								
6. Refund of tax on wine returned to bond not limited to unmerchantable wine.	fcq DOE+180 days	Negligible Revenue Effect								
7. Use of additional ameliorating material in certain wines	fcq DOE+180 days	No Revenue Effect								

8. Domestically produced beer may be withdrawn free of tax for use of foreign embassies, legations, etc.	fcq DOE+180 days	Negligible Revenue Effect								
9. Beer may be withdrawn free of tax for destruction	fcq DOE+180 days	Negligible Revenue Effect								
10. Authority to allow drawback on exported beer without submission of records.	fcq DOE+180 days	No Revenue Effect								
11. Transfer to brewery of beer imported in bulk without payment of tax	fcq DOE+180 days	Negligible Revenue Effect								
B. Consolidate Imposition of Aviation Gasoline Excise Tax	1/1/96	([11])	....	....	....	....	....	....	([11])	([11])
C. Other Excise Tax Provisions:										
1. Authority for IRS to grant exemptions from registration requirements	fcq DOE+180 days	No Revenue Effect								
2. Clarify present law for retail truck excise tax (certain activities do not constitute remanufacture).	DOE	Negligible Revenue Effect								
3. Exempt Alaska from diesel dyeing requirement during period that the State is exempt from Clean Air Act dyeing requirement.	DOE	−1	([13])	....	....	....	....	....	−1	−1
4. Repeal of temporary reduction in tax on piggyback trailers as "deadwood"	DOE	No Revenue Effect								
5. Delete deep seabed hard minerals excise tax as "deadwood"	DOE	No Revenue Effect								
VIII. Administrative Simplification Provisions										
A. General Provisions:										
1. Repeal of authority to disclose whether prospective juror has been audited	DOE	No Revenue Effect								
2. Clarification of statute of limitations for items from pass-through entities	tyba DOE	No Revenue Effect								
3. Certain notices disregarded under provision increasing interest rate on large corporate underpayments.	1/1/96	([13])	([13])	([13])	([13])	([13])	([13])	([13])	−1	−1
4. Withholding of Puerto Rico income taxes from the salaries of employees of the United States.	tyba 1995	No Revenue Effect								
B. Tax Court Procedures:										
1. Overpayment determinations of Tax Court	DOE	No Revenue Effect								
2. Awarding of administrative costs and attorneys fees	DOE	No Revenue Effect								
3. Redetermination of interest pursuant to motion	DOE	No Revenue Effect								
4. Application of net worth requirement for awards of litigation costs	DOE	No Revenue Effect								
C. Authority for Certain Cooperative Agreements:										
1. Cooperative agreements with State tax authorities	DOE	No Revenue Effect								
Total of Tax Simplification Act (Title XIV)		−157	−646	−865	−717	−733	−769	−839	−3,129	−4,735
Grand total of revenue effects (Titles XIII and XIV)		171	582	1,996	3,140	3,700	4,631	5,749	9,579	19,922
Grand total of outlay effects (Titles XIII and XIV)		131	2,636	2,779	2,904	3,062	3,186	3,234	11,513	17,933

Joint Committee on Taxation.
NOTES: Details may not add to totals due to rounding. For revenue estimation purposes, the date of enactment of this bill is assumed to be October 1, 1995.
Legend and Footnotes:
Legend for "Effective" column:

s/a=sales after;
sea=sales and exchanges after;
DOE=date of enactment;
tyba=taxable years beginning after;
r/a=remuneration after;
asda=annuity starting date after;
yba=years beginning after;
pyba=plan years beginning after;
fcq DOE+180 days=beginning of first calendar quarter that starts at least 180 days after date of enactment;
ppisa DOE=property placed in service after date of enactment;
cc/tyea/E=contracts completed in taxable years ending after date of enactment;
gira=gross income received after;
eaii GATT=effective as if included in GATT;
tyea=taxable years ending after;
reoa=reportable events that occur after;
pybo/a=plan years beginning on or after;
lyba=limitation years beginning after;
da=distributions after;
tybo/a=taxable years beginning on or after;
bia=bonds issued after;
pra=payments received after;
ama=awards made after;
6ma DOE=6 months after date of enactment;
tyea DOE=taxable years ending after date of enactment;
ga DOE=gifts after date of enactment;
dda DOE+decedents dying after date of enactment;
ara=amounts received after;
ipoaa=interest paid or accrued after;
ica=involuntary conversion after;
atsotppa DOE=any tax shelter offered to potential participants after date of enactment;
eaii OBRA=effective as if included in the Omnibus Budget Reconciliation Act of 1993.

[1] Credit rate at 35% on first $6,000 of income and AFDC included.

[2] Estimates provided by the Congressional Budget Office [CBO].

[3] Section 257(b)(2)(c) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Budget Enforcement Act of 1990, indicates that ''excise taxes dedicated to a trust fund, if expiring, are assumed to be extended at current rates''. Since the revenues from these taxes are dedicated to the Airport and Airway Trust Fund, an extension of the taxes is scored as having no revenue effect.

[4] Loss of less than $1 million.

[5] Loss of less than $5 million.

[6] Gain of less than $1 million.

[7] Gain of less than $5 million.

[8] Gain of less than $25 million.

[9] No new suspense accounts could be established in taxable years ending after 9/13/95. The income in existing suspense accounts would be recognized in equal installments over a 20-year period beginning with the first taxable year beginning after 9/13/95.

[10] Loss of less than $50 million.

[11] Gain of less than $500,000.

[12] Due to interaction between the provisions, items do not sum to total package.

[13] Loss of less than $500,000.

[14] Gain of less than $50,000.

[15] Gain of less than $250,000.

[16] Loss of less than $25 million.

B. Statement Regarding New Budget Authority and Tax Expenditures

Budget authority

In compliance with subdivision (B) of clause 2(l)(3) of Rule XI of the Rules of the House of Representatives, the committee states that titles XIII and XIV involve no new or increased budget authority. The amounts shown in the revenue table above relating to information sharing and EITC reforms (outlay reduction amounts) involve reductions in budget authority.

Tax expenditures

In compliance with subdivision (B) of clause 2(l)(3) of Rule XI of the Rules of the House of Representatives, the committee states that the provisions shown in the revenue table above relating to income tax revenue increases generally involve reductions in tax expenditures and that the provisions relating to income tax revenue reductions generally involve increases in tax expenditures. The title XIII provision establishing medical savings accounts involves new tax expenditure amounts.

C. Cost Estimate of the Congressional Budget Office

In compliance with subdivision (c) of clause 2(l)(3) of Rule XI of the Rules of the House of Representatives requiring a cost estimate prepared by the Congressional Budget Office, the committee advises that the Congressional Budget Office submitted the following statement with respect to titles XIII and XIV.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 3, 1995.

Hon. BILL ARCHER,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed Title XIII, the Revenue Reconciliation Act of 1995, and Title XIV, the Tax Simplification Act of 1995, as transmitted from the House Committee on Ways and Means to the Committee on the Budget on September 22, 1995. The Joint Committee on Taxation [JCT] provided estimates for most of the revenue provisions, and CBO concurs with their estimates. CBO estimates that title XIII and title XIV would decrease the deficit by $0.3 billion in fiscal year 1996 and by $37.9 billion over fiscal years 1996 through 2002. This estimate, which reflects JCT's final estimate of the corporate pension reversion provision, supersedes CBO's estimate of September 22, 1995.

Title XIII extends expiring tax provisions, establishes medical savings accounts, provides a second taxpayer bill of rights, increases the taxes of corporations and other businesses, reduces the cost of the earned income tax credit, and makes technical corrections. In addition, it extends the Department of Veterans Affairs' access to Internal Revenue Service data through fiscal year 2002. CBO estimates that this provision would reduce outlays on veterans programs by $0.140 billion in fiscal years 1999 through 2002.

Finally, title XIII increases the public debt limit to $5.5 trillion. Title XIV includes provisions for tax simplification. The budget effects of title XIII and title XIV are shown in the enclosed tables.

CBO understands that the Committee on the Budget will be responsible for interpreting how these proposals compare with the reconciliation instructions in the budget resolution.

If you wish further details, please feel free to contact me or your staff may wish to contact Stephanie Weiner.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

BUDGET EFFECTS OF TITLES XIII AND XIV, BY SUBTITLE

[By fiscal year, in billions of dollars]

	1996	1997	1998	1999	2000	2001	2002
TITLE XIII							
Subtitle A: Expiring Provisions—Revenue Effects:							
On-Budget	−2.213	−2.473	−1.434	−0.621	−0.382	−0.191	−0.045
Off-Budget [1]	−0.233	−0.159	−0.098	0.000	0.000	0.000	0.000
Subtitle B: Medical Savings Accounts—Revenue Effects	−0.117	−0.197	−0.233	−0.268	−0.306	−0.321	−0.337
Subtitle C: Taxpayer Bill of Rights No. 2—Revenue Effects	−0.012	−0.095	−0.099	−0.100	−0.027	−0.030	−0.030
Subtitle D: Additional Technical Corrections—Revenue Effects	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Subtitle E: Information Sharing Provision—Outlay Effects	0.000	0.000	0.000	−0.014	−0.028	−0.042	−0.056
Subtitle F: Corporate and Other Reforms—Revenue Effects [2]	2.864	3.371	3.901	3.989	4.253	4.974	5.911
Subtitle G: EITC Reform:							
Revenue Effects	0.039	0.781	0.824	0.857	0.895	0.950	1.071
Outlay Effects	−0.131	−2.636	−2.779	−2.897	−3.045	−3.159	−3.197
Subtitle H: Extension of Debt Ceiling:							
Revenue Effects	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Outlay Effects	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Subtitle I: Coal Industry Retiree Health Equity—Revenue Effects	0.000	0.000	0.000	0.000	0.000	0.000	0.000
TITLE XIV							
Tax Simplification—Revenue Effects	−0.157	−0.646	−0.865	−0.717	−0.733	−0.769	−0.839

[1] Extending the exclusion for employer-provided educational assistance would reduce Social Security revenues, which are off-budget.
[2] One provision, to modify the tax benefits available to certain alcohol fuels, might also affect outlays. Because it depends on other action taken during reconciliation regarding farm programs, the effect cannot be estimated at this time.

BUDGET EFFECTS OF TITLES XIII AND XIV

[By fiscal year, in billions of dollars]

	1996	1997	1998	1999	2000	2001	2002
REVENUES							
Projected Revenues Under Current Law [1]	1,417.619	1,475.210	1,546.076	1,617.969	1,697.155	1,786.321	1,879.300
Proposed Changes:							
On Budget	0.404	0.741	2.094	3.140	3.700	4.613	5.731
Off Budget	−0.233	−0.159	−0.098	0.000	0.000	0.000	0.000
Projected Revenues Under Titles XIII and XIV	1,417.790	1,475.792	1,548.072	1,621.109	1,700.855	1,790.934	1,885.031

BUDGET EFFECTS OF TITLES XIII AND XIV—Continued

[By fiscal year, in billions of dollars]

	1996	1997	1998	1999	2000	2001	2002
OUTLAYS							
Projected EITC Outlays: [1]							
Under Current Law	20.374	22.551	23.483	24.512	25.553	26.499	27.517
Proposed Changes	−0.131	−2.636	−2.779	−2.897	−3.045	−3.159	−3.197
Projected EITC Outlays Under Title XIII	20.243	19.915	20.704	21.615	22.508	23.340	24.320
Projected Veterans Pension Outlays:							
Under Current Law	2.599	2.714	2.604	2.776	3.013	2.569	2.789
Proposed Changes	0.000	0.000	0.000	−0.010	−0.020	−0.030	−0.040
Projected Veterans Pension Outlays Under Title XIII	2.599	2.714	2.604	2.766	2.993	2.539	2.749
Projected Medical Care Cost Recovery:							
Under Current Law	−0.641	−0.731	−0.758	−0.577	−0.608	−0.641	−0.676
Proposed Changes	0.000	0.000	0.000	−0.004	−0.008	−0.012	−0.016
Projected Medical Care Cost Recovery Under Title XIII	−0.641	−0.731	−0.758	−0.581	−0.616	−0.653	−0.692

[1] Includes the effects of Public Law 104–7 (H.R. 831).

V. Other Matters to be Discussed Under House Rules

A. Committee Oversight Findings and Recommendations

With respect to subdivision (A) of clause 2(l)(3) of Rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee on Ways and Means advises that it was as a result of the committee's oversight activities concerning expiring tax provisions, health care expenses, taxpayer rights, technical corrections, tax information sharing, corporate and other tax reforms, reform of the earned income tax credit program, the public debt limit, the coal industry retiree health benefit program, and tax simplification that the Committee on Ways and Means concluded it is appropriate to enact the provisions contained in titles XIII and XIV. (See also the Legislative History portion of the committee's report for background on the legislative hearings held on provisions contained in titles XIII and XIV.)

B. Findings and Recommendations of the Committee on Government Reform and Oversight

With respect to subdivision (D) of clause 2(l)(3) of Rule XI of the Rules of the House of Representatives, the Committee on Ways and Means advises that no oversight findings or recommendations have been submitted to the committee by the Committee on Government Reform and Oversight with respect to the provisions contained in titles XIII and XIV.

C. Inflationary Impact Statement

In compliance with clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the committee makes the following statement concerning the possible inflationary impact of titles XIII and XIV.

The provisions of titles XIII and XIV are projected to reduce the net Federal deficit, and will not have any overall inflationary impact on prices in the operation of the nation's economy.

D. Applicability of House Rule XXI5(c)

Rule XXI5(c) of the Rules of the House of Representatives provides that "No bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase shall be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting." The committee has carefully reviewed the provisions of titles XIII and XIV of the revenue reconciliation provisions approved by the committee to determine whether any of these provisions constitute a Federal income tax rate increase within the meaning of the House Rules. It is the opinion of the committee that there is no provision of titles XIII and XIV of the revenue reconciliation provisions that constitutes a Federal income tax rate increase within the meaning of House Rule XXI5(c) or (d).

TITLE XVI—TRANSFORMATION OF THE MEDICAID PROGRAM

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, October 9, 1995.

Hon. JOHN R. KASICH,
Chairman, Committee on the Budget,
Washington, DC.

DEAR MR. CHAIRMAN: I am transmitting herewith the recommendations of the Committee on Commerce for changes in laws within its jurisdiction with respect to the Medicaid Program pursuant to the provisions of section 310 of the Congressional Budget Act of 1974 and section 105(a)(2)(B)(iii) of House Concurrent Resolution 67, the Concurrent Resolution on the Budget—Fiscal Years 1996–2002. The committee's recommendations for Medicare will be transmitted to you separately.

The enclosed recommendations were embodied in a committee print adopted by the committee on September 22, 1995. Pursuant to your instructions, the legislative language of this committee print has been incorporated into title XVI. The enclosed recommendations will meet to exceed the budget targets for the committee with respect to the Medicaid Program.

Also enclosed is the accompanying report language for title XVI, the Congressional Budget Office cost estimate, and a Ramseyer submission.

If you have any questions concerning the committee's recommendations, or if I can be of any further assistance to you as you proceed with your committee's deliberations, please do not hesitate to contact me.

Sincerely,

THOMAS J. BLILEY, Jr.,
Chairman.

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PURPOSE AND SUMMARY

The purpose of the Committee Print on the Transformation of the Medicaid Program, as amended, is to repeal title XIX and establish title XXI of the Social Security Act to provide block grants to the States to enable them to provide medical assistance to low-income individuals and families in a more effective, efficient, and responsive manner. The committee print also establishes a formula by which funds are allocated among the States.

BACKGROUND AND NEED FOR LEGISLATION

Established by President Lyndon Johnson in 1965, Medicaid is a joint Federal-State matching open-ended entitlement program that pays for medically necessary health care services provided to eligible beneficiaries by qualified providers. There are Medicaid programs in all States except Arizona, which runs a similar medical assistance program under a Federal waiver. (Federal funds for the Arizona program come from the Medicaid budget.) In addition, the Medicaid program is operated in the District of Columbia and United States territories, such as Puerto Rico and Guam.

According to the Congressional Budget Office [CBO], the Medicaid Program will cost $156.5 billion in fiscal year 1995. Of this amount, the Federal Government will be responsible for an estimated $89.2 billion. This expenditure represents a 11,050 percent increase over the program's initial cost to the Federal Government of $800 million in fiscal year 1966. Since 1990, Medicaid has been the fastest-growing segment of the Federal Government's budget, with costs soaring at annual rates as high as 31 percent. Placed in broader context, the Medicaid Program's average annual rate of growth since 1990 has been 4 times that of private sector health care costs, which are rising at roughly 4–5 percent annually. Although CBO projects Medicaid spending will rise at a comparatively stable rate of 10 percent per year, at that rate total program costs will double by the year 2002 absent reform. As detailed in the section entitled "Program Growth versus Program Cuts" below, the MediGrant plan replaces the Medicaid Program's unsustainable cost spiral with considerable and consistent funding to the States.

Medicaid's extraordinary rate of growth has made it the single largest item in many State budgets. According to the testimony of Governors and Medicaid officials appearing before the Committee on Commerce, States have been compelled by the program's cost to restrict investment in other critical human services, including child welfare, education, mental health, and public safety. As described in the "Fiscal Impact of Medicaid Growth on the Federal and State Budgets" section below, the program's cost has been frequently underestimated and continues to threaten the budgetary stability of virtually every State.

Medicaid was also intended to operate as a joint Federal-State matching entitlement program providing medical assistance for low-income persons who are aged, blind, disabled, members of families with dependent children, and certain other pregnant women and children. Accordingly, States were permitted to design and administer their own programs, subject to specified Federal guidelines. In reality, however, the current Medicaid Program hardly resembles that which was originally intended. Instead of allowing State and local officials the flexibility to best administer Medicaid, the Federal Government created an extensive "one-size-fits-all" maze of Federal mandates and administrative requirements. The nature of this centralized approach to program administration is described in the "Medicaid Micromanagement" section below.

Finally, the operational and administrative inflexibility of the current Medicaid Program has prevented States from developing innovative and cost-efficient mechanisms designed to meet the health care needs of their residents. Instead, they have been forced to shoulder the uncontrollable costs of what has become a rigid and ineffective health care program. The program's centralized micromanagement, complex bureaucratic requirements, and outdated service delivery is often cited by the States as impeding their ability to provide the quality health coverage, patient responsiveness, and efficient administration common in the private sector. As a result, States have long sought enhanced operational flexibility so that they can better meet the health care needs of their low-income residents. The current program's complex system of waivers and the anticipated impact of the MediGrant plan's flexibility is described below in the section entitled "Fostering Greater State Innovation."

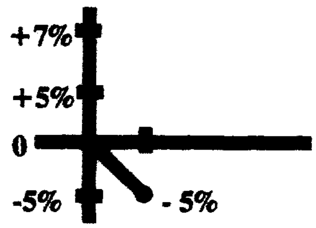
PROGRAM GROWTH VERSUS PROGRAM CUTS

During the debate on the new MediGrant Program, the assertion has been repeatedly made that this legislation cuts health care spending for low-income people. This assertion is categorically false. Over the 7-year period ending in fiscal year 2002, the average growth rate in the program is a guaranteed 4.9 percent annual increase. Total Federal spending between fiscal years 1996–2002 will total $773.1 billion. Total Federal expenditures in fiscal year 2002 will be $124.3 billion, a 39 percent cumulative increase over fiscal year 1995. During every year during the seven year budget window, Federal Medicaid spending will grow by an annual rate of at least 4 percent.

The MediGrant plan's provision for annual rates of positive growth is even clearer when compared with President Clinton's 1993 proposal for Medicaid spending. In fact, a comparison of the two proposals reveals which represents spending growth and which represents a spending cut. As the chart below clearly illustrates, H.R. 3600 (the President's "Health Security Act," introduced November 20, 1993) proposed a very different first-year Medicaid spending than that contained in the MediGrant plan. In fact, Section 9101 of the Health Security Act actually cut the Federal contribution to Medicaid by 5 percent (i.e., a growth rate of negative 5 percent). By contrast, the MediGrant plan increases MediGrant spending 7.2 percent in the first year.

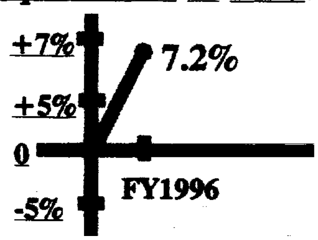
A Medicaid Definition Primer

Clinton in 1993: This is a CUT in Medicaid



Section 9101 (Clinton Bill):
"The Secretary shall provide each year for payment to each regional alliance of an amount equal to the Federal Medicaid assistance percentage of (a) 95 percent..."

Republicans in 1995: This is GROWTH in Medicaid



Medicaid Growth Rate for FY96, per the Conference Agreement on Budget Resolution

Clearly, the MediGrant plan funding levels far exceed those proposed by the President in his Health Security Act. Just as important, however, is the fact that the MediGrant spending growth rates even exceed actual State Medicaid spending. Currently, all States report to HCFA quarterly estimates of their projected Medicaid expenditures for the upcoming fiscal year. Reported on a form called the HCFA–307, these projections are very important, since they are produced not by the Federal Government but by the States themselves. As a result, these projections have been highly accurate predictors of future State spending.

In the HCFA–37 report submitted by all the States during August 1995, States projected the growth in their Medicaid spending between fiscal year 1995 and fiscal year 1996 (including administration) to be 4.3 percent. The MediGrant plan increases Medicaid spending by 7.24 percent during this same period—thereby exceeding State projections of actual spending by nearly 3 percentage points. It is for this reason that the MediGrant plan permits States to roll over unused MediGrant funds to future years, for investment in innovative health care delivery systems or to meet unanticipated rainy day needs.

THE FISCAL IMPACT OF MEDICAID GROWTH ON THE FEDERAL AND STATE BUDGETS

Federal expenditures on the Medicaid Program during the past 7 years have contributed significantly to the Federal budget deficit. However, Federal costs—while great—are only half the story. The States have been faced with even more extraordinary fiscal pressures because Medicaid mandates have made health care the fastest growing area of State budgets. Since almost all States are constitutionally required to annually balance their budgets, the Medicaid financial squeeze has had dramatic effects.

The table below, prepared by the National Association of State Budget Officers [NASBO], documents the extraordinary growth of Medicaid expenditures as a percentage of State expenditures. In 1987, Medicaid represented approximately 10.2 percent of all State expenditures. By 1991, Medicaid's State spending share had risen to 14.2 percent, and by 1994 it was a striking 19.4 percent of all State spending.

MEDICAID SPENDING AS A PERCENTAGE OF TOTAL STATE SPENDING

	1987	1988	1989	1990	1991	1992	1993	1994
Medicaid spending	10.20	10.80	11.30	12.50	14.20	17.50	18.40	19.40
Non-Medicaid spending	89.90	89.20	88.70	87.50	85.80	82.50	81.60	80.60

Source: National Association of State Budget Officers (NASBO) 1994 State Expenditure Report.

As State Medicaid spending has experienced uncontrollable rates of growth, other critical State funding initiatives have suffered commensurately. The table below, also prepared by NASBO, documents the decline in State spending for (a) elementary and secondary education, (b) higher education, (c) welfare, and (d) transportation due to the growth in Medicaid. Based on NASBO data, State expenditures for elementary and secondary education declined 11 percent between 1987 and 1994; State higher education spending dropped 8 percent over the same time period; State welfare spending experienced a 13 percent decrease; and State investment in public transportation declined 16 percent. On the other hand, during the 1987–94 time period, Medicaid spending increased by more than 90 percent!

PROGRAM SPENDING WITHIN SECTORS AS A PERCENTAGE OF TOTAL STATE SPENDING

1	1987	1988	1989	1990	1991	1992	1993	1994
Elementary/secondary ed.	22.80	23.00	24.30	22.80	22.00	21.10	21.20	20.30
Higher education	12.30	11.80	12.00	12.20	11.50	10.90	10.60	10.50
Welfare	5.20	5.30	5.10	5.00	5.30	5.00	4.90	4.50
Medicaid	10.20	10.80	11.30	12.50	14.20	17.50	18.40	19.40
Transportation	10.60	10.30	10.10	9.90	9.40	9.10	9.00	8.90

Source: National Association of State Budget Officers (NASBO) 1994 State Expenditure Report.

This data clearly reveals why many States officials have described Medicaid mandates as the worst of all the Federal unfunded mandates placed on the States. As these mandates were enacted into law through budget reconciliation in the late 1980's and early 1990's, they created havoc with State budgets and ultimately drained State funds away from education and welfare programs.

Federal and State budgetary havoc within budget reconciliation

One of the most perplexing issues concerning the unconstrained fiscal growth of Medicaid is the manner in which it was accomplished. Most of the Medicaid mandates were enacted through reconciliation bills which were supposed to be budget-cutting vehicles.

How was this accomplished? In the days of the Gramm-Rudman-Hollings Budgetary Act, it was accomplished by budgetary tricks.

For example, in the concurrent resolution of the budget for fiscal year 1990 (H. Con. Res. 106), $200 million of new budget entitlement authority became available for fiscal year 1990 for Medicaid spending. With this $200 million, the Energy and Commerce Committee was able to report out five new mandated Medicaid expansions by slipping effective dates on some of the pending provisions so that only one calendar quarter's worth of spending would occur in fiscal year 1990. By this budgetary trick, the Medicaid provisions technically met the budget target in the budget resolution. However, in the out-years, these five Medicaid provisions would cost additional billions of dollars. In 1989, the Office of Management and Budget [OMB] estimated that, taken together, these Medicaid provisions would have increased Federal spending by approximately $8.6 billion over a 5-year period.

Another perplexing issue in the enactment of Medicaid mandates has been the inability of the Congressional Budget Office [CBO] to provide accurate estimates of the projected costs of these laws. The table below documents the astounding inaccuracies in the CBO analysis of a number of Medicaid mandates enacted into law in the Omnibus Reconciliation Act of 1989 (OBRA 1989).

CBO OBRA 1989 MEDICAID MANDATES—ESTIMATES VERSUS ACTUAL FLORIDA EXPENDITURES FY 1991

[In millions]

	CBO scoring of all States	Florida Federal expenditures
Mandatory coverage of pregnant women	270	31
EPSDT	25	63
Payment for federally qualified health centers	15	8
Payment for obstetrical and pediatric services	11	4
Total	321	106

Florida represents 3.8 percent of all Federal Medicaid expenditures—but accounted for 33 percent of total estimated expenditures.

This table lists four major Medicaid mandates enacted into law in 1989: First, mandatory coverage of pregnant women up to 133 percent; second, mandatory coverage of early and periodic screening, diagnostic, and treatment services [EPSDT]; third, enhanced payment for health care centers; and fourth, enhanced payments for obstetrical and pediatric services.[1] The first column is the official CBO estimate for all Federal expenditures for these benefits in fiscal year 1991. The second column is the actual Florida Federal expenditures provided by the Florida Medicaid director at that time. Florida represents only 3.8 percent of all Federal Medicaid expenditures.

First, compare the totals for fiscal year 1991. The CBO calculated that the total Federal expenditures for these four mandates would be $321 million in fiscal year 1991 for all States. However, Florida's actual total was a whopping $106 million.

With regard to the CBO cost estimate of the EPSDT benefit, the picture is even more disturbing. Incredibly, the CBO estimated that the total Federal expenditures for all States would be $25 mil-

[1] In a 1990 official policy document of the National Governors' Association [NGA] entitled "Short-Term Medicaid Policy" [Appendix A], the Nation's Governors identified several of these mandates as particularly troublesome. In this NGA official document, they asked for relief from mandates in general and specified detailed changes to the EPSDT benefit. Governor Florio of New Jersey chaired the NGA Health Care task force which produced this policy, and then-Governor Bill Clinton was a member of the task force.

lion for fiscal year 1991. The State of Florida alone spent $63 million in fiscal year 1991 to comply with this mandate, or more than double the CBO official estimate.[2]

If one projects the Florida cost experience for these OBRA 1989 mandates to the entire Nation, the analysis leads to a disturbing conclusion. While CBO projected expenditures of $323 million in fiscal year 1991, estimated Federal expenditures were closer to $2.8 billion. Though forecasting is not an exact science, an error of 888 percent is truly indefensible. This staggering forecasting error not only contributed to the growth of the Federal budget deficit but was a devastating fiscal blow to the States.

MEDICAID MICROMANAGEMENT

According to many State officials, the explosion of Medicaid spending is due in large part to congressional and Executive directives. Over the last decade, federally mandated eligibility changes fueled the expansion of the Medicaid-eligible population and the cost of the program. Although States have the discretion of supplementing Medicaid's mandated coverage standards, the Federal government frequently expanded the scope of these standards. As a result, States have been compelled to increase their spending levels in order to receive their share of federally-matched Medicaid spending.

One of the most frequently heard State complaints regarding the Medicaid program concerns HCFA micromanagement. At the Federal level, Medicaid is administered by HCFA which, through a network of regional offices, is supposed to work with State Medicaid departments to ensure appropriate management of the Medicaid Program. However, the reality of HCFA-State relations has been described by many State officials as less a matter of coordinated cooperation than as an example of Federal micromanagement in State affairs.

When questioned during the committee's six hearings on the Medicaid Program, State Governors and Medicaid directors pointed to program mandates as evidence of excessive Federal interference. In its June 8, 1995 hearing, the Subcommittee on Health and Environment heard from Florida Governor Lawton Chiles, Illinois Governor Jim Edgar, Michigan Governor John Engler, Tennessee Governor Don Sundquist, and Utah Governor Mike Leavitt. Speaking for many of his colleagues, Governor Edgar expressed grave concern over the impact on other critical human service priorities of spiraling Medicaid spending resulting from Federal Medicaid micromanagement.

> The Federal Government has micromanaged the program by heaping mandate after mandate upon the States. It has told us whom we must serve and dictated how we must provide the service without regard to cost. In 1966,

[2] In 1990, the American Public Welfare Association [APWA], conducted a study of the effect of the EPSDT expansions of OBRA 1989. Preliminary results from just 13 states showed an increase of $468 million in State and Federal spending in fiscal year 1991. The States responding were: Alabama, Alaska, Arizona, Florida, Idaho, Maryland, Missouri, North Dakota, Oregon, South Dakota, Texas, Utah, and Wisconsin. The APWA study states "Please also be advised that this total figure is likely to increase as more states complete a budget analysis." Note that the two largest Medicaid programs—California and New York—were not included in this study.

> the first year of Medicaid, Illinois spent $87 million on the program. This year, we will spend 64 times that much, or nearly $6 billion. In Illinois, the tab for recent Federal mandates alone tops $480 million this year.

Governor Engler cited the Boren amendment, which requires States to pay reasonable rates for nursing and hospital care, as one of many Federal directives that have served to impose substantial burdens on State Medicaid Programs. Intended to aid States in their efforts to contain program costs, the Boren amendment's vague payment standard resulted in numerous lawsuits and the imposition of arbitrarily higher reimbursement levels.

> Creeping micromanagement has entangled us in a briar patch of perverse incentives that are costing taxpayers dearly. One example * * * is a direct result of the Boren amendment: in 1989, Michigan Medicaid costs in a nursing facility were $35 a day. In 1994, they were up to $57 a day. We are paying a lot more money, but our patients are not getting a lot more care.

Governors Edgar and Engler are neither the first nor the only State executives to describe to Congress the burdens of HCFA and the Medicaid Program it administers. On December 8, 1990, then-Governor Bill Clinton told the House Government Operations Committee that "Medicaid used to be a program with a lot of options and few mandates—now, it's just the opposite."

This sentiment was echoed during the subcommittee's June 22, 1995 Medicaid hearing. At that hearing, John Rodriguez, the deputy director of the California Medicaid Program, cited a number of instances in which Federal micromanagement has impeded optimal service delivery and program administration. One case concerns the preadmission screening and annual resident review [PASARR] under which States are required to independently assess the need for nursing home placement. After evaluating 81,500 nursing home patients in 1989, at a cost of $28.5 million, California concluded that only five placements were inappropriate. In other words, this mandate resulted in a cost of $5.6 million per individual identified as needing more appropriate placement. Moreover, PASARR merely duplicated more efficient California procedures.

Not surprisingly, many States have sought to take advantage of one of the only forms of relief available to them: waivers granted by the Federal Government. Faced with the bureaucratic complexity and escalating costs of the Medicaid Program, States have sought to make more efficient use of Medicaid dollars by such means as managed care. In many instances, the savings realized from these measures have been used to help fund program expansions, as part of State initiatives to extend coverage to uninsured individuals. Since significant use of managed care in Medicaid is not permitted under current Medicaid rules, States have sought waivers of statutory and regulatory requirements from the Secretary of Health and Human Services.

Currently, Federal Medicaid law makes two basic types of waivers available to the States. Section 1915 of the Social Security Act provides for program waivers, which allow States meeting specified conditions to operate certain types of special programs that are listed in the statute. Section 1115(a) provides much broader authority to grant demonstration waivers, under which nearly any provision of Medicaid law may be waived to allow States to experiment with program improvements.

The experience of those States with waivers permitted under sections 1915 and 1115(a) has been mixed. While any relief from the Medicaid Program's many restrictions is certainly appreciated by the States, the waiver process itself is a source of great dissatisfaction. The process by which States seek section 1115 waivers is particularly complex and costly. In order to comply with HCFA's numerous application requirements, States must devote staff time and money to the process—resources they charge could be used to provide health care services to low-income State residents. When the application is complete, it typically contains enough paper to measure almost 3 feet in height.

Unfortunately, States still face often insurmountable obstacles to flexibility even after completing their waiver applications. To date, only 10 of an estimated 23 section 1115 waivers have been approved by HCFA. In addition, the length of Federal waiver application review averages at least 12 months.

According to Ohio's Medicaid director, Arnold Tompkins, who appeared before the subcommittee on June 22, 1995, HCFA's slow process for reviewing State waiver applications is largely due to the substantial flaws of the waiver process itself:

> Five months into the [waiver] process we learned that our approach to budget neutrality * * * was considered off-base by HCFA. We spent the summer redesigning the budget to meet HCFA's concerns. But this redesign was still not enough. In the ninth month we were told that the redrawn budget had to be redrawn again because Federal thinking had changed about how budget neutrality should be demonstrated.

FOSTERING GREATER STATE INNOVATION

All across the Nation, States are working to improve the quality, effectiveness, and efficiency of the health care assistance they provide to their low-income residents. However, they have little of the operational or administrative flexibility they need to make their medical assistance programs more responsive and efficient. As a result, Governors and other State officials have long complained that Medicaid has served as an obstacle, rather than as an opportunity, to developing innovative health care delivery strategies.

The limited role that States are currently permitted to play has given State officials little choice but to watch, almost from the sidelines, as Medicaid has consumed more and more of their State resources. With Medicaid already the single largest program in virtually every State budget, its projected growth raises the prospect of severe financial crisis in the States. Already, Medicaid spending has prevented increased State investments in education, welfare services, law enforcement, and other critical human services.

Amidst the charges that the Health Care Financing Administration has served more as a hindrance than a help in States' efforts to get control over Medicaid spending, many States have sought relief through the Federal waiver process. As described above, however, that process is itself a source of considerable State frustration.

This is particularly difficult for many States to understand, given the success achieved by the relatively few States that have received waivers. For example, HCFA data reveals that States have achieved significant program efficiencies by means of waiver-facilitated managed care initiatives. In particular, section 1915(b) waivers have enabled some States to establish limited managed care programs. Based on State reports to HCFA, the General Accounting Office has calculated that the national weighted average of the savings realized from such Medicaid managed care initiatives is 9.4 percent. As a result, States were able to serve the populations enrolled in these programs using almost 10 percent fewer dollars than required by the traditional Medicaid Program.

According to State officials, the lesson to be drawn from such experiences is clear: If Medicaid is to be substantially improved and the growth rate of its costs brought under control, States must be empowered to restructure their Medicaid Programs. They argue that the millions of low-income Americans who need health care assistance will be more effectively and efficiently served only when Governors and State legislators are given the flexibility to tailor Medicaid to meet the unique conditions in their States.

In light of the inflexibility of the current Medicaid Program and the ineffectiveness of its waiver process, many States have petitioned Congress for significant Medicaid reform. In fact, State Governors have forged a close working relationship with the 104th Congress in an effort to develop the MediGrant block grant reform initiative. During the course of its hearings on the Medicaid Program, the Subcommittee on Health and Environment was advised by State Governors, Medicaid Directors, and other program experts to replace the current Medicaid Program and its lengthy waiver process with a block grant reform initiative.

Described as the most effective means for transforming Medicaid into a truly State-driven program, block grants would give States unprecedented operational and administrative flexibility. According to State officials, a block grant program would enable States to develop innovative service delivery strategies to meet the health care needs of their low-income residents. In other words, Medicaid block grants would free States in a manner far surpassing any flexibility they may enjoy under a waiver. In fact, under the proposed block grant reform initiative Medicaid would become the State-run program it was initially intended to be. In place of the current rigid, bureaucratic, and often inadequate service delivery system, States would be able to develop health service strategies tailored to match the differing characteristics of their communities. These can include capitation and managed care, enhanced maternal, child, and mental health care initiatives, and insurance premium subsidy programs.

Medicaid block grants would also create compelling incentives for States to achieve unprecedented program efficiency. Currently, the Medicaid Program effectively penalizes States which save Medicaid resources. On average, 57 percent of all State savings revert to the Federal Government, not the States that made the savings possible. Under a block grant approach, States would be able to utilize the full value of any savings they achieve because they would be free to reinvest those resources into better service delivery, expanded benefits, and new program innovations.

The contribution that the flexibility of block grants can make to State medical assistance programs may be ascertained by examining current State initiatives. While ongoing State innovations have been severely restricted by the current Medicaid System, they are indicative of how States would respond to the flexibility of a Medicaid block grant. As is illustrated by the following summaries of several of the initiatives undertaken nationwide, State and managed care provider innovations appear capable of substantially improving Medicaid service delivery and administration:

The Arizona Health Care Cost Containment System [AHCCCS]

Enacted in 1981, AHCCCS was the Nation's first Statewide Medicaid managed care system based on a prepaid capitated financing arrangement with HMO's and other private health plans. Today, AHCCCS covers 450,000 low-income Arizonans and includes extensive participation of Arizona's elderly and disabled eligible residents. Because AHCCCS awards bids to health plans on the basis of a competitive contract award process, it has realized significant ongoing savings due to the increased level of competition among health plans that AHCCCS has fostered.

New England-region managed care initiatives

Many of the Medicaid-eligible residents of Philadelphia, Pittsburgh, and Camden receive their care through the Mercy Health Plan. Among Mercy's health care service delivery innovations are: the Perinatal Risk Reduction Program (known as WeeCare), the Immunization Outreach Program, the Breast Cancer Screening and Outreach Program, HIV/AIDS Case Management Services, and the Asthma Action program. HIP is another managed care company serving the Medicaid population in the New England region. Among its various innovative coverage programs are the Well Baby Program, the Good Health Program, the Good Health Incentive Program, and the Retention Program. All of these programs create incentives and offer rewards to induce HIP's enrollees to get regular check-ups and emphasize preventive care, including immunizations and proper nutrition.

South Carolina's Neonatal Cocaine Treatment and Prevention Program

In 1989, the city of Charleston, SC established a program at the Medical University of South Carolina [MUSC] that offered drug rehabilitation, amnesty from criminal prosecution, and free health care to cocaine-dependent pregnant women. Those refusing to join the program were prosecuted for their drug use. As a result of the program, the number of crack babies was reduced without a corresponding reduction in the number of total live births. Despite the unprecedented success of this program, however, the U.S. Department of Health and Human Services threatened to terminate MUSC's Federal funding on the grounds that the program discriminated against and violated the privacy rights of participating mothers. Faced with the potential loss of 60 percent of its total annual budget, MUSC was forced to suspend the program in 1993. Since that time the number of crack babies born in Charleston has returned to approximately pre-program levels. If Medicaid is block granted to the States, South Carolina has stated its intention to reestablish the crack baby prevention program, thus saving an estimated 18 babies a year from the suffering and death that results from the prenatal cocaine use of pregnant women.

TennCare

Faced with spiraling Medicaid costs, Tennessee consolidated its Medicaid, uninsured, and indigent programs into a statewide capitated managed care initiative. Despite early provider payment difficulties, TennCare has achieved a marked reduction in the number of uninsured. TennCare has also helped Tennessee contain utilization rates of emergency room and hospital care, improve primary care access, and achieve cost control through carrier competition.

The Watts Health Foundation

The Watts Health Foundation, which is operated by United Health Plan in Los Angeles, began as a neighborhood health center soon after the 1965 Watts revolt. Since then, it has grown into a full-service managed care network serving 200,000 area residents. United operates two community health centers and specialized programs providing substance abuse treatment, geriatric care, school-based health centers, mobile medical centers, and HIV outreach and treatment.

QUALITY ASSURANCE FOR NURSING HOME FACILITIES

Under the MediGrant plan, current Federal nursing home reform provisions would be replaced with new requirements. States would be required to establish and maintain standards in the following areas for nursing facilities providing services under the State's plan: First, quality assurance systems; second, resident assessment procedures, including care planning and outcome evaluation; third, the assurance of a safe and adequate physical plan for the facility; fourth, staff qualifications; fifth, utilization review; sixth, the treatment of resident medical records; and seventh, policies, procedures, and bylaws for operation.

Standards for nursing facilities would also be required to provide for the protection and enforcement of resident rights including the rights: First, to exercise one's rights as a resident of the facility and as a citizen of the United States; second, to receive notice of rights and services; third, to be protected against the misuse of resident funds; fourth, to be provided privacy and confidentiality; fifth, to voice grievances; sixth, to examine the results of State certification program inspections; seventh, to refuse to perform services for the facility; eighth, to be provided privacy in communications and to receive mail; ninth, to have the facility provide immediate access to any resident by any representative of the State's certification program, the resident's individual physician, the State long-term care ombudsman, and any person the resident has designated as a visitor; tenth, to be free from abuse, including verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion; eleventh, to retain the use of personal property; and twelfth, to be provided with prior written notice of pending transfer and discharge.

The legislation requires as a condition of receiving MediGrant Federal funds that States promulgate standards through the State's legislative, regulatory, or other processes, which can only take effect after the State had provided the public with notice and the opportunity for comment.

States would also be required to provide for the establishment and operation of a program for certification of nursing facilities that meet specific standards as well as the decertification of those facilities that fail to meet such standards. States would be required to ensure public access to the certification program's evaluations, including compliance records and enforcement actions. States would be required to periodically audit their expenditures under the program.

States would be required to impose certain sanctions against nursing facilities not meeting these requirements and standards. If a State determined that a certified nursing facility no longer substantially met specified requirements and further determined that the facility's deficiencies immediately jeopardized the health and safety of residents, then the State would be required, at a minimum, to terminate the facility's certification for participation. If the facility's deficiencies did not immediately jeopardize the health and safety of residents, the State could provide lesser sanctions.

These new and extensive requirements will provide for the protection and well-being of nursing home residents while allowing the States the flexibility they need to tailor enforcement programs to the need of their citizens. This combination of quality assurances for nursing home residents and State flexibility is exactly what the National Governors' Association asked for in their Medicaid Policy Document of 1990 which stated that "States should be considered in compliance with the law if a comparable quality assurance program is in place or developed." [Appendix A]

THE IMPLEMENTATION OF OBRA 1987 NURSING HOME STANDARDS

One of the major problems with the Federal nursing home requirements has been its implementation by HCFA. Since the law was enacted as part of OBRA 1987, it has been mired in the Federal Government's micromanagement morass. The first problem that developed was that the law required States to implement the requirements of OBRA 1987 even without regulations or guidance from HCFA. For example, the law required States to undertake preadmission screening and annual resident review [PASARR] effective January 1989. Unfortunately, HCFA issued no regulations or guidance on how to perform PASSAR until May 1989. This placed the States and nursing facilities in the absurd position of implementing a statutory requirement which had no explanation or content. In fact, in 1989 the implementation of the nursing home standards law was so flawed that the Committee on Energy and Commerce reported out of committee, as part of OBRA 1989, 22 highly technical multipart amendments to correct elements of the underlying statute.

In 1990, the initial regulations and State Operations Manual 232 [SOM 232] were released by HCFA—but only described the survey process. Although States were required to implement the following, there were still no regulations for: First, requirements for nurse aide certification; second, enforcement regulations; and third, the minimum data set [MDS]. In 1992, a new State operations manual [SOM 250] was issued making further modifications to the survey process and establishing transitional enforcement. However, it too did not provide any guidance concerning enforcement regulations or MDS.

On July 1, 1995, the enforcement regulations went into effect, approximately 8 years after enactment of the legislation. These regulations impose a significant additional workload on the States without commensurate funding. The Office of Management and Budget [OMB] declared these regulations to be budget neutral when, in fact, they are an unfunded mandate. A sample of additional requirements include: First, additional noticing requirements and paperwork increases which have doubled the amount of clerical staff time and trebled the amount of supervisory review required for each survey not found to be in substantial compliance and second, requiring the use of an abbreviated survey protocol for investigating complaints. Based on estimates of just one State, California, this protocol trebles the amount of time previously taken to investigate complaints.

HEARINGS

The Subcommittee on Health and Environment held six hearings on Medicaid issues, including the Vaccines For Children Program. The hearing dates were: June 8, 1995, June 15, 1995, June 21, 1995, June 22, 1995, July 26, 1995, and August 1, 1995. Testimony at these hearings was received from 64 witnesses, including Governors, Members of Congress, representatives of the administration, representatives of State health care administrations, representatives of health care professionals, representatives from the health care industry, and persons served by the Medicaid Program.

Testifying before the subcommittee on June 8, 1995, were: The Honorable Jim Edgar, Governor, State of Illinois; the Honorable Mike Leavitt, Governor, State of Utah; the Honorable Don Sundquist, Governor, State of Tennessee; the Honorable Lawton Chiles, Governor, State of Florida; and the Honorable John Engler, Governor, State of Michigan.

Testifying before the subcommittee on June 15, 1995, were: Mr. Kwai-Cheung Chan, Director, Division of Program, Evaluation and Methodology, General Accounting Office; Dr. David Satcher, Director, Centers for Disease Control, accompanied by Mr. Jose Cordero, Deputy Director, National Immunization Program, Centers for Disease Control; Mr. Lance Hackett, vice president, Mercer Management Consulting; Mr. Henry Grabowski, department of economics, Duke University; Dr. J. Leighton Read, chairman and CEO, Aviron; Mr. Lance K. Gordon, Oravax, Inc.; Dr. Gordon Douglas, president, Merck vaccine division, Merck & Co., Inc.; Dr. Elin Gursky, senior assistant commissioner of health, New Jersey Department of Health, State of New Jersey; Mr. Robert M. Goldberg, Gordon Public Policy Center, Brandeis University; Dr. David

Smith, Commissioner, Texas Department of Health, representing the Association of State and Territorial Health Officers; Dr. Louis Cooper, director of pediatrics, St. Lukes Roosevelt Hospital Center, representing the American Academy of Pediatrics; and Mr. James Weill, general counsel, Children's Defense Fund.

Testifying before the subcommittee on June 21, 1995, were: Mr. Bruce Vladeck, Administrator, Health Care Financing Administration; Mr. Joe Antos, Assistant Director for Health and Human Resources, Congressional Budget Office; and Dr. Gail Wilensky, senior fellow, the Project HOPE.

Testifying before the subcommittee on June 22, 1995, were: Ms. Sally Richardson, Director of the Medicaid Bureau, Health Care Financing Administration; Ms. Barbara Matula, director, division of medical assistance, department of human resources, State of North Carolina; Mr. John Rodriquez, Deputy Director, Medical Care Services, State of California; Mr. Arnold Tompkins, director, department of human services, State of Ohio; Mr. Kevin Piper, health care financing director, department of health and human services, State of Wisconsin; Mr. Michael Diely, acting division director, division of health care financing, department of health, State of Utah; Mr. Don Herman, administrator, division of medical services, department of human services, State of Iowa; Dr. Gail Wilensky, senior fellow, the Project HOPE; Ms. Elizabeth Wehr, research associate, Center for Health Policy Research, George Washington University; and Mr. William Scanlon, Associate Director of Health Care Financing and Policy, General Accounting Office.

Testifying before the subcommittee on July 26, 1995 were: The Honorable Fife Symington, Governor of Arizona, accompanied by Dr. Mabel Chen, director, Arizona Health Care Cost Containment System; the Honorable Kay C. James, secretary of health and human resources, Commonwealth of Virginia; the Honorable Charles Condon, attorney general of South Carolina; Mr. Bruce Vladeck, Administrator, Health Care Financing Administration; Michael D. McKinney, M.D., commissioner, department of health and human services, State of Texas; Mr. Robert Corker, commissioner, department of finance and administration, State of Tennessee; Ms. Jean Thorne, director, office of medical assistance programs, Oregon Department of Human Resources, State of Oregon; Ms. Debra Ward, MPH, director, governmental relations, United Health Plan; Mr. Michael W. Murray, executive director, Health Plan of San Mateo; Ms. Judith Stavisky, associate vice president for health services, Mercy Health Plan; Ms. Maura Bluestone, president and CEO, the Bronx Health Plan; and Dr. Jesse Jampol, HIP Health Insurance Plan.

Testifying before the subcommittee on August 1, 1995, were: Ms. Donna Checkett, director, Missouri Division of Medical Services, chair, National Association of State, Medicaid Directors, representing the American Public Welfare Association; Ms. Diane Rowland, senior vice president, Henry J. Kaiser Family Foundation; Dr. Jennifer L. Howse, president, March of Dimes Birth Defects Foundation; Ms. Yvette Elkins; Dr. George Comerci, president, American Academy of Pediatrics; Ms. Beth Houghton, general counsel, chief financial officer, All Childrens Hospital, representing the National Association of Children's Hospitals; Mr. Mark Barnes, executive director, AIDS Action Council; Ms. Chris Koyanagi, director, government relations, the Bazelon Center for Mental Health Law; Mrs. Brenda Hantzes; Mr. Edwin W. Brown, chief executive officer, Florida Community Health Centers, Inc., representing the National Association of Community, Health Centers; Mr. Gail L. Warden, president and CEO, Henry Ford Health System, representing the American Hospital Association; Mr. Stephen McConnell, senior vice president for public policy, Alzheimer's Association; Dr. Paul Willging, executive vice president, American Health Care Association; Ms. Celia Wcislo, president, Local 285, Service Employees International Union; Ms. Judy Waxman, director, government affairs, Families USA; Ms. Kathleen Gannoe, program vice president, board of directors, National Citizen's Coalition for Nursing Home Reform; Ms. Beatrice Braun, board member, American Association of Retired Persons; Hon. Albert Eisenberg, supervisor, Arlington County, VA, representing the National Association of Counties; Mr. Larry S. Gage, president, National Association of Public Hospitals; and Mr. Charles DeBrunner, executive director, Urban Health Care Coalition of Pennsylvania.

COMMITTEE CONSIDERATION

On September 20 through 22, 1995, the Committee on Commerce met in open session and considered a committee print entitled "Title XVI—Transformation of the Medicaid Program." On September 22, 1995, the committee ordered the committee print entitled "Title XVI—Transformation of the Medicaid Program" transmitted to the House Committee on the Budget for inclusion in the fiscal year 1996 Omnibus Budget Reconciliation Act, as amended, by a rollcall vote of 27 yeas to 18 nays.

ROLLCALL VOTES

Pursuant to clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, following are listed the recorded votes on the motion to order the committee print entitled "Title XVI—Transformation of the Medicaid Program" transmitted to the House Committee on the Budget, and on amendments offered to the measure, including the names of those Members voting for and against.

ROLLCALL VOTE NO. 77

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program."

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Waxman re: maintain current regulations for residents of nursing homes.

Disposition: Not agreed to, by a rollcall vote of 17 yeas to 26 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley	....	X	....	Mr. Dingell	X	....	....
Mr. Moorhead	....	X	....	Mr. Waxman	X	....	....
Mr. Tauzin	....	X	....	Mr. Markey	X	....	....
Mr. Fields	....	....	....	Mr. Wyden	X	....	....
Mr. Oxley	....	X	....	Mr. Hall	....	....	....
Mr. Bilirakis	....	X	....	Mr. Bryant	X	....	....

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Schaefer	....	X	....	Mr. Boucher	....	....	....
Mr. Barton	....	X	....	Mr. Manton	X	....	....
Mr. Hastert	....	X	....	Mr. Towns	....	....	....
Mr. Upton	....	X	....	Mr. Studds	X	....	....
Mr. Stearns	....	X	....	Mr. Pallone	X	....	....
Mr. Paxon	....	X	....	Mr. Brown	X	....	....
Mr. Gillmor	....	X	....	Mrs. Lincoln	X	....	....
Mr. Klug	....	X	....	Mr. Gordon	X	....	....
Mr. Franks	....	X	....	Ms. Furse	X	....	....
Mr. Greenwood	....	X	....	Mr. Deutsch	X	....	....
Mr. Crapo	....	X	....	Mr. Rush	X	....	....
Mr. Cox	....	X	....	Ms. Eshoo	X	....	....
Mr. Deal	....	X	....	Mr. Klink	X	....	....
Mr. Burr	....	X	....	Mr. Stupak	X	....	....
Mr. Bilbray	....	X	....				
Mr. Whitfield	....	X	....				
Mr. Ganske	....	X	....				
Mr. Frisa	....	X	....				
Mr. Norwood	....	X	....				
Mr. White	....	X	....				
Mr. Coburn	....	X	....				

ROLLCALL VOTE NO. 78

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program."

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Markey re: maintain current regulations against spousal impoverishment.

Disposition: Not agreed to, by a rollcall vote of 18 yeas to 23 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nay	Present
Mr. Bliley	....	X	....	Mr. Dingell	X	....	....
Mr. Moorhead	....	X	....	Mr. Waxman	X	....	....
Mr. Tauzin	....	X	....	Mr. Markey	X	....	....
Mr. Fields	....	....	....	Mr. Wyden	X	....	....
Mr. Oxley	....	X	....	Mr. Hall	X	....	....
Mr. Bilirakis	....	X	....	Mr. Bryant	X	....	....
Mr. Schaefer	....	X	....	Mr. Boucher	X	....	....
Mr. Barton	....	X	....	Mr. Manton	X	....	....
Mr. Hastert	....	X	....	Mr. Towns	....	....	....
Mr. Upton	....	X	....	Mr. Studds	X	....	....
Mr. Stearns	....	....	....	Mr. Pallone	X	....	....
Mr. Paxon	....	X	....	Mr. Brown	X	....	....
Mr. Gillmor	....	X	....	Mrs. Lincoln	X	....	....
Mr. Klug	....	....	....	Mr. Gordon	....	....	....
Mr. Franks	....	X	....	Ms. Furse	X	....	....
Mr. Greenwood	....	X	....	Mr. Deutsch	X	....	....
Mr. Crapo	....	....	....	Mr. Rush	X	....	....
Mr. Cox	....	X	....	Ms. Eshoo	X	....	....
Mr. Deal	....	X	....	Mr. Klink	X	....	....
Mr. Burr	....	X	....	Mr. Stupak	X	....	....
Mr. Bilbray	....	X	....				
Mr. Whitfield	....	X	....				
Mr. Ganske	....	X	....				
Mr. Frisa	....	X	....				
Mr. Norwood	....	X	....				
Mr. White	....	X	....				
Mr. Coburn	....	X	....				

ROLLCALL VOTE NO. 79

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program."

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Klink re: maintain current regulations with respect to adult children and long-term care costs.

Disposition: Not agreed to, by a rollcall vote of 17 yeas to 23 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman	X		
Mr. Tauzin		X		Mr. Markey	X		
Mr. Fields				Mr. Wyden	X		
Mr. Oxley		X		Mr. Hall			
Mr. Bilirakis		X		Mr. Bryant	X		
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton		X		Mr. Manton	X		
Mr. Hastert				Mr. Towns			
Mr. Upton		X		Mr. Studds	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Paxon		X		Mr. Brown	X		
Mr. Gillmor		X		Mrs. Lincoln	X		
Mr. Klug				Mr. Gordon	X		
Mr. Franks		X		Ms. Furse	X		
Mr. Greenwood		X		Mr. Deutsch	X		
Mr. Crapo		X		Mr. Rush			
Mr. Cox		X		Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink	X		
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray		X					
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa							
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

ROLLCALL VOTE NO. 80

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program"

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mrs. Lincoln re: protection against liens on family homes and farms.

Disposition: Not agreed to, by a rollcall vote of 19 yeas to 24 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman	X		
Mr. Tauzin		X		Mr. Markey	X		
Mr. Fields		X		Mr. Wyden	X		
Mr. Oxley		X		Mr. Hall	X		
Mr. Bilirakis		X		Mr. Bryant	X		
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton		X		Mr. Manton	X		
Mr. Hastert				Mr. Towns	X		
Mr. Upton		X		Mr. Studds	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Paxon		X		Mr. Brown	X		
Mr. Gillmor		X		Mrs. Lincoln	X		

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Klug		X		Mr. Gordon	X		
Mr. Franks		X		Ms. Furse	X		
Mr. Greenwood		X		Mr. Deutsch	X		
Mr. Crapo		X		Mr. Rush			
Mr. Cox				Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink	X		
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray		X					
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

ROLLCALL VOTE NO. 81

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program."

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Ms. Eshoo and Ms. Furse re: maintain current regulations with respect to children of families below the poverty level.

Disposition: Not agreed to, by a rollcall vote of 18 yeas to 23 nays.

Representative	Yeas	Nays	Present	Represnetative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead				Mr. Waxman	X		
Mr. Tauzin				Mr. Markey	X		
Mr. Fields		X		Mr. Wyden	X		
Mr. Oxley		X		Mr. Hall	X		
Mr. Bilirakis		X		Mr. Bryant	X		
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton		X		Mr. Manton	X		
Mr. Hastert				Mr. Towns	X		
Mr. Upton		X		Mr. Studds	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Paxon		X		Mr. Brown			
Mr. Gillmor		X		Mrs. Lincoln	X		
Mr. Klug		X		Mr. Gordon	X		
Mr. Franks		X		Ms. Furse	X		
Mr. Greenwood		X		Mr. Deutsch	X		
Mr. Crapo		X		Mr. Rush			
Mr. Cox		X		Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink	X		
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray		X					
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White							
Mr. Coburn		X					

ROLLCALL VOTE NO. 82

Bill: Committee print entitled "Title XVI—Transformation of Medicaid Program."

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Wyden re: coverage for screening and treatment of breast and cervical cancer for women whose families are below the poverty level.

Disposition: Not agreed to, by a rollcall vote of 18 yeas to 26 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley	....	X	....	Mr. Dingell	X	....	....
Mr. Moorhead	....	X	....	Mr. Waxman	X	....	....
Mr. Tauzin	....	X	....	Mr. Markey	X	....	....
Mr. Fields	....	X	....	Mr. Wyden	x	....	....
Mr. Oxley	....	X	....	Mr. Hall	X	....	....
Mr. Bilirakis	....	X	....	Mr. Bryant	X	....	....
Mr. Schaefer	....	X	....	Mr. Boucher	X	....	....
Mr. Barton	....	X	....	Mr. Manton	X	....	....
Mr. Hastert	....	X	....	Mr. Towns	....	....	....
Mr. Upton	....	X	....	Mr. Studds	X	....	....
Mr. Stearns	....	X	....	Mr. Pallone	X	....	....
Mr. Paxon	....	X	....	Mr. Brown	X	....	....
Mr. Gillmor	....	....	....	Mrs. Lincoln	X	....	....
Mr. Klug	....	X	....	Mr. Gordon	X	....	....
Mr. Franks	....	X	....	Ms. Furse	X	....	....
Mr. Greenwood	....	X	....	Mr. Deutsch	X	....	....
Mr. Crapo	....	X	....	Mr. Rush	....	....	....
Mr. Cox	....	X	....	Ms. Eshoo	X	....	....
Mr. Deal	....	X	....	Mr. Klink	X	....	....
Mr. Burr	....	X	....	Mr. Stupak	X	....	....
Mr. Bilbray	....	X	....				
Mr. Whitfield	....	X	....				
Mr. Ganske	....	X	....				
Mr. Frisa	....	X	....				
Mr. Norwood	....	X	....				
Mr. White	....	X	....				
Mr. Coburn	....	X	....				

ROLLCALL VOTE NO. 83

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program."

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Pallone re: maintain current regulations with respect to Medicare cost sharing and premium assistance for elderly individuals below the poverty level.

Disposition: Not agreed to, by a rollcall vote of 18 yeas to 24 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley	....	X	....	Mr. Dingell	X	....	....
Mr. Moorhead	....	....	....	Mr. Waxman	X	....	....
Mr. Tauzin	....	X	....	Mr. Markey	X	....	....
Mr. Fields	....	X	....	Mr. Wyden	X	....	....
Mr. Oxley	....	X	....	Mr. Hall	....	....	....
Mr. Bilirakis	....	X	....	Mr. Bryant	X	....	....
Mr. Schaefer	....	X	....	Mr. Boucher	X	....	....
Mr. Barton	....	....	....	Mr. Manton	X	....	....
Mr. Hastert	....	X	....	Mr. Towns	X	....	....
Mr. Upton	....	X	....	Mr. Studds	X	....	....
Mr. Stearns	....	X	....	Mr. Pallone	X	....	....
Mr. Paxon	....	X	....	Mr. Brown	X	....	....
Mr. Gillmor	....	....	....	Mrs. Lincoln	X	....	....
Mr. Klug	....	X	....	Mr. Gordon	X	....	....
Mr. Franks	....	X	....	Ms. Furse	X	....	....
Mr. Greenwood	....	X	....	Mr. Deutsch	X	....	....
Mr. Crapo	....	X	....	Mr. Rush	....	....	....

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Cox		X		Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink	X		
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray		X					
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

ROLLCALL VOTE NO. 84

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program."

Amendment: Amendment to the the Bliley amendment in the nature of a substitute by Mr. Deutsch re: maintain current regulations with respect to Medicaid coverage of Alzheimer patients.

Disposition: Not agreed to, by a rollcall vote of 19 yeas to 25 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead				Mr. Waxman	X		
Mr. Tauzin		X		Mr. Markey	X		
Mr. Fields		X		Mr. Wyden	X		
Mr. Oxley		X		Mr. Hall	X		
Mr. Bilirakis		X		Mr. Bryant	X		
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton				Mr. Manton	X		
Mr. Hastert		X		Mr. Towns	X		
Mr. Upton		X		Mr. Studds	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Paxon		X		Mr. Brown	X		
Mr. Gillmor		X		Mrs. Lincoln	X		
Mr. Klug		X		Mr. Gordon	X		
Mr. Franks		X		Ms. Furse	X		
Mr. Greenwood		X		Mr. Deutsch	X		
Mr. Crapo		X		Mr. Rush			
Mr. Cox		X		Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink	X		
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray		X					
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

ROLLCALL VOTE NO. 85

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program."

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Bryant re: adjust the Medicaid allotment formula.

Disposition: Not agreed to, by a rollcall vote of 15 yeas to 30 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead	X			Mr. Waxman	X		
Mr. Tauzin		X		Mr. Markey		X	
Mr. Fields		X		Mr. Wyden	X		
Mr. Oxley		X		Mr. Hall	X		
Mr. Bilirakis		X		Mr. Bryant	X		
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton		X		Mr. Manton		X	
Mr. Hastert				Mr. Towns		X	
Mr. Upton		X		Mr. Studds		X	
Mr. Stearns		X		Mr. Pallone		X	
Mr. Paxon		X		Mr. Brown	X		
Mr. Gillmor		X		Mrs. Lincoln	X		
Mr. Klug		X		Mr. Gordon		X	
Mr. Franks		X		Ms. Furse	X		
Mr. Greenwood		X		Mr. Deutsch	X		
Mr. Crapo		X		Mr. Rush			
Mr. Cox	X			Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink		X	
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray	X						
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

ROLLCALL VOTE NO. 86

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program."

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Waxman re: State-based entitlement.

Disposition: Not agreed to, by a rollcall vote of 14 yeas to 31 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman	X		
Mr. Tauzin		X		Mr. Markey	X		
Mr. Fields		X		Mr. Wyden	X		
Mr. Oxley		X		Mr. Hall		X	
Mr. Bilirakis		X		Mr. Bryant			
Mr. Schaefer		X		Mr. Boucher		X	
Mr. Barton		X		Mr. Manton			
Mr. Hastert		X		Mr. Towns	X		
Mr. Upton		X		Mr. Studds	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Paxon		X		Mr. Brown	X		
Mr. Gillmor		X		Mrs. Lincoln		X	
Mr. Klug		X		Mr. Gordon		X	
Mr. Franks		X		Ms. Furse	X		
Mr. Greenwood		X		Mr. Deutsch	X		
Mr. Crapo		X		Mr. Rush	X		
Mr. Cox		X		Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink	X		
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray		X					
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. White		X					
Mr. Coburn		X					

ROLLCALL VOTE NO. 87

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program."

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mrs. Lincoln re: payment for medically necessary services provided by childrens' hospitals to children with special needs.

Disposition: Not agreed to, by a rollcall vote of 19 yeas to 22 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman	X		
Mr. Tauzin				Mr. Markey	X		
Mr. Fields				Mr. Wyden	X		
Mr. Oxley		X		Mr. Hall	X		
Mr. Bilirakis		X		Mr. Bryant	X		
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton		X		Mr. Manton	X		
Mr. Hastert				Mr. Towns			
Mr. Upton		X		Mr. Studds	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Paxon		X		Mr. Brown	X		
Mr. Gillmor		X		Mrs. Lincoln	X		
Mr. Klug		X		Mr. Gordon	X		
Mr. Franks		X		Ms. Furse	X		
Mr. Greenwood				Mr. Deutsch	X		
Mr. Crapo		X		Mr. Rush	X		
Mr. Cox				Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink	X		
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray		X					
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

ROLLCALL VOTE NO. 88

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program."

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Rush re: maintain current regulations providing Medicaid coverage during a welfare-to-work transition.

Disposition: Not agreed to, by a rollcall vote of 19 yeas to 27 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman	X		
Mr. Tauzin		X		Mr. Markey			
Mr. Fields		X		Mr. Wyden	X		
Mr. Oxley		X		Mr. Hall	X		
Mr. Bilirakis		X		Mr. Bryant	X		

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton		X		Mr. Manton	X		
Mr. Hastert		X		Mr. Towns	X		
Mr. Upton		X		Mr. Studds	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Paxon		X		Mr. Brown	X		
Mr. Gillmor		X		Mrs. Lincoln	X		
Mr. Klug		X		Mr. Gordon	X		
Mr. Franks		X		Ms. Furse	X		
Mr. Greenwood		X		Mr. Deutsch	X		
Mr. Crapo		X		Mr. Rush	X		
Mr. Cox		X		Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink	X		
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray		X					
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

ROLLCALL VOTE NO. 89

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program."

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Pallone re: payment safeguards under Medigrant.

Disposition: Not agreed to, by a rollcall vote of 20 yeas to 26 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman	X		
Mr. Tauzin		X		Mr. Markey	X		
Mr. Fields		X		Mr. Wyden	X		
Mr. Oxley		X		Mr. Hall	X		
Mr. Bilirakis		X		Mr. Bryant	X		
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton		X		Mr. Manton	X		
Mr. Hastert		X		Mr. Towns	X		
Mr. Upton		X		Mr. Studds	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Paxon				Mr. Brown	X		
Mr. Gillmor		X		Mrs. Lincoln	X		
Mr. Klug		X		Mr. Gordon	X		
Mr. Franks		X		Ms. Furse	X		
Mr. Greenwood		X		Mr. Deutsch	X		
Mr. Crapo		X		Mr. Rush	X		
Mr. Cox		X		Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink	X		
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray		X					
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

ROLLCALL VOTE NO. 90

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program."

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Wyden re: protection for waivered States.

Disposition: Not agreed to, by a rollcall vote of 17 yeas to 27 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman	X		
Mr. Tauzin		X		Mr. Markey	X		
Mr. Fields		X		Mr. Wyden	X		
Mr. Oxley				Mr. Hall		X	
Mr. Bilirakis		X		Mr. Bryant			
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton		X		Mr. Manton	X		
Mr. Hastert		X		Mr. Towns	X		
Mr. Upton		X		Mr. Studds	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Paxon		X		Mr. Brown	X		
Mr. Gillmor		X		Mrs. Lincoln		X	
Mr. Klug		X		Mr. Gordon	X		
Mr. Franks		X		Ms. Furse	X		
Mr. Greenwood		X		Mr. Deutsch	X		
Mr. Crapo		X		Mr. Rush	X		
Mr. Cox		X		Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink	X		
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray		X					
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

ROLLCALL VOTE NO. 91

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program."

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Stupak re: maintain current regulations with respect to access of rural residents to basic and preventive services.

Disposition: Not agreed to, by a rollcall vote of 21 yeas to 23 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman	X		
Mr. Tauzin		X		Mr. Markey	X		
Mr. Fields		X		Mr. Wyden	X		
Mr. Oxley		X		Mr. Hall	X		
Mr. Bilirakis		X		Mr. Bryant			
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton		X		Mr. Manton	X		
Mr. Hastert		X		Mr. Towns	X		
Mr. Upton		X		Mr. Studds	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Paxon		X		Mr. Brown	X		
Mr. Gillmor				Mrs. Lincoln	X		
Mr. Klug		X		Mr. Gordon	X		

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Franks	....	X	....	Ms. Furse	X	....	....
Mr. Greenwood	....	X	....	Mr. Deutsch	X	....	....
Mr. Crapo	....	X	....	Mr. Rush	X	....	....
Mr. Cox	....	X	....	Ms. Eshoo	X	....	....
Mr. Deal	....	X	....	Mr. Klink	X	....	....
Mr. Burr	....	X	....	Mr. Stupak	X	....	....
Mr. Bilbray	....	X	....				
Mr. Whitfield	X	....	....				
Mr. Ganske	....	X	....				
Mr. Frisa	....	X	....				
Mr. Norwood	....	X	....				
Mr. White	....	X	....				
Mr. Coburn	X	....	....				

ROLLCALL VOTE NO. 92

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program."

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Towns re: nondiscrimination among lawful providers.

Disposition: Not agreed to, by a rollcall vote of 17 yeas to 23 nays.

Representative	yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley	....	X	....	Mr. Dingell	X	....	....
Mr. Moorehead	....	X	....	Mr. Waxman	....	....	....
Mr. Tauzin	....	X	....	Mr. Markey	....	....	....
Mr. Fields	....	X	....	Mr. Wyden	....	....	....
Mr. Oxley	....	X	....	Mr. Hall	X	....	....
Mr. Bilirakis	....	X	....	Mr. Bryant	X	....	....
Mr. Schaefer	....	X	....	Mr. Boucher	X	....	....
Mr. Barton	....	X	....	Mr. Manton	X	....	....
Mr. Hastert	....	X	....	Mr. Towns	X	....	....
Mr. Upton	....	X	....	Mr. Studds	....	....	....
Mr. Stearns	....	X	....	Mr. Pallone	X	....	....
Mr. Paxon	....	X	....	Mr. Brown	....	X	....
Mr. Gillmor	....	X	....	Mrs. Lincoln	X	....	....
Mr. Klug	....	....	....	Mr. Gordon	X	....	....
Mr. Franks	....	X	....	Ms. Furse	X	....	....
Mr. Greenwood	....	X	....	Mr. Deutsch	X	....	....
Mr. Crapo	....	X	....	Mr. Rush	X	....	....
Mr. Cox	....	....	....	Ms. Eshoo	X	....	....
Mr. Deal	....	X	....	Mr. Klink	X	....	....
Mr. Burr	....	X	....	Mr. Stupak	X	....	....
Mr. Bilbray	....	X	....				
Mr. Whitfield	....	X	....				
Mr. Ganske	....	....	....				
Mr. Frisa	....	X	....				
Mr. Norwood	X	....	....				
Mr. White	....	X	....				
Mr. Coburn	X	....	....				

ROLLCALL VOTE NO. 93

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program."

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Waxman re: maintain current regulations for pregnant women and infants whose families have incomes below the poverty level.

Disposition: Not agreed to, by rollcall vote of 18 yeas to 25 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman	X		
Mr. Tauzin		X		Mr. Markey	X		
Mr. Fields		X		Mr. Wyden	X		
Mr. Oxley		X		Mr. Hall	X		
Mr. Bilirakis		X		Mr. Bryant	X		
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton		X		Mr. Manton	X		
Mr. Hastert		X		Mr. Towns	X		
Mr. Upton		X		Mr. Studds			
Mr. Stearns		X		Mr. Pallone	X		
Mr. Paxon		X		Mr. Brown	X		
Mr. Gillmor		X		Mrs. Lincoln	X		
Mr. Klug				Mr. Gordon			
Mr. Franks		X		Ms. Furse	X		
Mr. Greenwood		X		Mr. Deutsch	X		
Mr. Crapo		X		Mr. Rush	X		
Mr. Cox				Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink	X		
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray		X					
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

ROLLCALL VOTE NO. 94

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program."

Motion: Motion by Mr. Bliley to order the committee print entitled "Title XVI—Transformation of the Medicaid Program," as amended, transmitted to the Committee on the Budget for inclusion in the fiscal year 1996 Omnibus Budget Reconciliation Act.

Disposition: Not agreed to, by a rollcall vote of 27 yeas to 18 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley	X			Mr. Dingell		X	
Mr. Moorhead	X			Mr. Waxman		X	
Mr. Tauzin	X			Mr. Markey		X	
Mr. Fields	X			Mr. Wyden		X	
Mr. Oxley	X			Mr. Hall	X		
Mr. Bilirakis	X			Mr. Bryant		X	
Mr. Schaefer	X			Mr. Boucher		X	
Mr. Barton	X			Mr. Manton		X	
Mr. Hastert	X			Mr. Towns		X	
Mr. Upton	X			Mr. Studds			
Mr. Stearns	X			Mr. Pallone		X	
Mr. Paxon	X			Mr. Brown		X	
Mr. Gillmor	X			Mrs. Lincoln		X	
Mr. Klug				Mr. Gordon		X	
Mr. Franks	X			Ms. Furse		X	
Mr. Greenwood	X			Mr. Deutsch		X	
Mr. Crapo	X			Mr. Rush		X	
Mr. Cox	X			Ms. Eshoo		X	
Mr. Deal	X			Mr. Klink		X	
Mr. Burr	X			Mr. Stupak		X	
Mr. Bilbray	X						

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Whitfield	X	....	....				
Mr. Ganske	X	....	....				
Mr. Frisa	X	....	....				
Mr. Norwood	X	....	....				
Mr. White	X	....	....				
Mr. Coburn	X	....	....				

COMMITTEE ON COMMERCE—104TH CONGRESS VOICE VOTES

Bill: Committee print entitled "Title XVI—Transformation of the Medicaid Program".

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Ms. Eshoo re: clarifying amendment with respect to antifraud provisions.

Disposition: Agreed to, by a voice vote.

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Tauzin re: treatment of health centers in the State medigrant plan.

Disposition: Agreed to, by a voice vote.

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Bilirakis and Mr. Deal re: require protections against spousal impoverishment to be included in the State medigrant plans.

Disposition: Agreed to, by a voice vote.

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Studds re: provide no exclusions for preexisting conditions.

Disposition: Withdrawn, by unanimous consent.

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Ganske re: equal payment rates for rural providers.

Disposition: Agreed to, by a voice vote.

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Ms. Eshoo re: description of support for public hospitals.

Disposition: Withdrawn, by unanimous consent.

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Studds re: provide no exclusions for preexisting conditions.

Disposition: Agreed to, by a voice vote.

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Coburn re: 100 percent FMAP for certain Indian health care facilities.

Disposition: Agreed to, by a voice vote.

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Mr. Coburn re: preclude payment for abortions in the case of statutory rape.

Disposition: Agreed to, by unanimous consent.

Amendment: Amendment to the Bliley amendment in the nature of a substitute by Ms. Eshoo re: description of support for public hospitals.

Disposition: Agreed to, by a voice vote.

Amendment: En bloc amendment to the Bliley amendment in the nature of a substitute by Mr. Bilirakis re: technical amendments.

Disposition: Agreed to, by a voice vote.
Amendment: Amendment in the nature of a substitute by Mr. Bliley.
Disposition: Agree to, as amended, by a voice vote.

SECTION-BY-SECTION ANALYSIS OF THE COMMITTEE PRINT

Sec. 16000. Short title

Section 16000 establishes the short title of the committee print to be the "Medicaid Transformation Act of 1995."

Sec. 16001. Transformation of the Medicaid Program

Section 16001 amends the Social Security Act by adding to the end Title XXI, "MediGrant Program for Low-Income Individuals and Families."

Sec. 2100. Purpose: State MediGrant plans

Current law.—Medicaid is authorized under title XIX of the Social Security Act to enable each State to furnish medical assistance and rehabilitation and other services on behalf of families with dependent children and aged, blind, or disabled individuals whose income and resources are insufficient to meet the costs of necessary medical services. Each State is required to have a State plan approved by the Secretary of the Department of Health and Human Services [HHS]. The plan describes the State's basic eligibility, coverage, reimbursement, and administrative policies and is updated periodically to reflect changes.

Explanation of provision.—The proposal would create an entitlement to States under title XXI of the Social Security Act for block grants to enable States to provide medical assistance to low-income individuals and families. A State would be required to provide the Secretary with a MediGrant plan that sets forth how the State intends to use the funds provided to provide medical assistance. An approved plan would continue in effect unless and until first, the State amends the plan, second, the State terminates participation in the program, or third the Secretary finds substantial noncompliance of the plan with the program's requirements.

PART A—OBJECTIVES, GOALS, AND PERFORMANCE UNDER STATE PLANS

Sec. 2101. Description of strategic objectives and performance goals

Current law.—There are no provisions for objectives and goals, except that States are required to meet participation goals in their early and periodic screening, diagnostic, and treatment [EPSDT] programs for eligibles under age 21.

Explanation of provision.—A State would be required to include in its MediGrant plan a description of its strategic objectives and performance goals for providing health care services, and the manner in which the plan is designed to meet the objectives and goals. Goals and objectives related to rates of childhood immunizations and reductions in infant mortality and morbidity would be required. With regard to other objectives and goals, the State could consider factors such as priorities for providing assistance to low-income populations, priorities for general public health and health status for low-income populations, the State's financial resources and economic conditions, and the adequacy of the State's health care infrastructure. To the extent practicable, a State would be required to establish one or more performance goals for each strategic objective and describe how performance would be measured and compared against goals. Strategic objectives would be required to cover a period of at least 5 years and would have to be updated and revised at least every 3 years. Performance goals would have to be established for dates not more than 3 years apart.

Sec. 2102. Annual reports

Current law.—State plans must provide for reports, in such form and containing such information, as the Secretary may require. In addition, the law requires States to report annually certain information relating to EPSDT services.

Explanation of provision.—By March 31 following a fiscal year during which a State MediGrant plan has been in effect, each State would be required to submit a report to the Secretary and the Congress on program activities and performance for that Federal fiscal year. Each report would be required to include data on the following: aggregate expenditures for each category of eligible individuals, expenditures by each category of eligibles for covered services provided on a fee-for-service basis, expenditures for payments to capitated organizations by each category of eligibles, and administrative expenditures; utilization of services, including summary statistics, for each category of eligible individuals, of items and services provided on a fee-for-service basis and a summary of data reported by capitated health care organizations; achievement of performance goals including actions to be taken in case a goal was not met; program evaluations; fraud and abuse and quality control activities; and plan administration, including a description of the roles and responsibilities of State entities responsible for administering the program and organization charts for each, a description of any interstate compact entered into, and citations to State law and rules governing the State's activities under the program. With respect to inpatient hospital services provided on a fee-for-service basis, a description of the average amount paid per discharge compared to either the average charge, or to the State's estimate of the average amount paid by commercial insurers. For subsequent fiscal years, expenditures and utilization reports would be required to fit the reporting format specified by the MediGrant task force established under title XXI.

Categories of eligible individuals would include children, blind or disabled adults under age 65, persons 65 or older, and other adults.

Sec. 2103. Periodic, independent evaluations

Current law.—No provision.

Explanation of provision.—Beginning in FY1998 and at least every third year thereafter, each State would be required to provide for evaluation of the operation of its MediGrant plan, conducted by an entity that is responsible neither for submission of the State plan nor for administering any activity under the plan.

Sec. 2104. Description of process for MediGrant plan development

Current law.—No provision.

Explanation of provision.—State MediGrant plans would be required to include a description of the process for development and implementation of the plan.

Sec. 2105. Consultation in MediGrant plan development

Current law.—A State plan must provide for methods of administration that are found by the Secretary to be necessary for the proper and efficient operation of the plan. Based on this statutory provision, Medicaid regulations require that each State establish a medical care advisory committee.

Explanation of provision.—Before submitting a plan or amendment to the Secretary, each State would be required to provide a public notice with a description of the plan or amendment, a means for the public to inspect or obtain a copy of the plan or amendment, and an opportunity for submittal and consideration of public comments. This provision would apply except when the State submitted a revision of a plan or amendment in response to a determination of disapproval by HHS.

Each State with a MediGrant plan would be required to establish and maintain an advisory committee for consultation in the development, revision, and monitoring the performance of the plan. Such consultation would include the development of strategic objectives and performance goals, the annual report, and the research design for evaluating the State's plan operations. Members of the advisory committee should represent different geographic regions of the State although proportional representation would not be required. A State would be permitted to establish more than one advisory committee, including committees that represent the interests of specific population groups, provider groups, or geographic areas.

Sec. 2106. MediGrant task force

Current law.—No provision.

Explanation of provision.—The Secretary of HHS would be required to establish a MediGrant task force consisting of six members appointed by the chair of the National Governors Association [NGA] and six appointed by the vice chair of the NGA. The task force would be assisted by an advisory group composed of one representative from each of the following associations: National Committee for Quality Assurance; Joint Commission for the Accreditation of Healthcare Organizations; Group Health Association of America; American Managed Care and Review Association; Association of State and Territorial Health Officers; American Medical Association; American Hospital Association; American Dental Association; American College of Gerontology; American Health Care Association; and associations identified by the Secretary as representing the interests of disabled individuals, children, the elderly, and mentally ill individuals. The task force would be required to first specify the format of expenditure and utilization summaries by December 31, 1996; second study and report to Congress and the States by April 1, 1997, with recommendations on models for strategic objectives and performance goals; methodologies for measuring and verifying each objective or goal recommended; an assessment of the usefulness to States of quality assurance safeguards, utilization data sets, and accreditation programs used in the private sector; and designs and methodologies for providing for independent evaluations. States would not be required to adopt any of the objectives or goals suggested by the task force. The Agency for Health Care Policy and Research, or the Secretary, would be required to provide administrative support for the task force.

PART B—ELIGIBILITY, BENEFITS, AND SET-ASIDES

Sec. 2111. General description of eligibility and benefits

Current law.—Each State designs its own Medicaid program within proscribed Federal guidelines. States must provide Medicaid to certain population groups and have the option of covering others. Similarly, a State must cover certain basic services and may cover additional services if it chooses. States set their own payment rates for services, with some limitations.

The Medicaid statute defines over 50 distinct population groups as potentially eligible, including those for which coverage is mandatory in all States and those that may be covered at a State's option. These generally fall into five basic groups: Current and some former recipients of cash assistance, either Aid to Families with Dependent Children [AFDC] or Supplemental Security Income [SSI]; low-income pregnant women and children who do not qualify for AFDC; the medically needy, persons who do not meet the financial standards for cash assistance programs but meet the categorical standards and have income and resources within special medically needy limits established by the States; persons requiring institutional care and covered under special eligibility rules; and low-income Medicare beneficiaries, for whom Medicaid pays required Medicare premiums, deductibles, and coinsurance. Applicants' income and other resources must be within program financial standards. These standards vary among States, and different standards apply to different population groups within a State.

Mandatory services for all groups except the medically needy and qualified Medicare beneficiaries [QMB's] include: Inpatient and outpatient hospital services, nursing facilities [NF] services for individuals 21 or older, physicians' services, laboratory and x-ray services, early and periodic screening, diagnostic and treatment [EPSDT] services for individuals under age 21, family planning services, home health services for any individual entitled to NF care, rural health clinic and federally qualified health center [FQHC] services, and services of nurse-midwives, certified pediatric nurse practitioners, and certified family nurse practitioners. States may also offer any of a broad range of optional services. Among the most important, in terms of program expenditure, are prescribed drugs, dental and optical services, clinic services, and care in ICF's–MR and in institutions for mental diseases [IMD's].

In general, States develop their own methods and standards for reimbursement of Medicaid services. However, two Federal statutory provisions have had a significant effect on program spending: The so-called Boren amendment, which requires that payments to hospitals and NF's be "reasonable and adequate to meet the costs [of] efficiently and economically operated facilities," and requirements for payment adjustments to disproportionate share hospitals [DSH's], those that serve a higher than average number of Medicaid and other low-income patients. States are also required to pay federally qualified health centers (FQHC's, including specified centers with Public Health Service grants and other entities eligible for but not receiving grants) on a full reasonable cost basis.

Explanation of provision.—The MediGrant plan would be required to include a description of (a) the eligible population, including categories, duration of eligibility, financial standards and methodologies, and standards for the protection of income and resources of the community spouses of institutionalized beneficiaries, among others; (b) duration and scope of covered services, including variations by population group; (c) the delivery method, such as use of vouchers, fee-for-service, or managed care arrangements; (d) required beneficiary cost-sharing, including any responsibility of parents and spouses of recipients; (e) any incentives or requirements to encourage appropriate utilization; and (f) any payment provisions for health centers (similar to FQHC's), public hospitals, and certain hospitals serving a high share of low-income patients, along with a description of where and how enrollees previously using these facilities under Medicaid would obtain services (if these facilities were no longer available to them). A State using a fee-for-service system would also have to describe how it determines provider qualifications and sets reimbursement rates. The MediGrant plan would have to include coverage of immunizations for eligible children, in accordance with a schedule developed by the State health department in consultation with those responsible for administering the MediGrant plan. Payment rates for rural providers would have to equal those for comparable nonrural providers, except that States could offer incentives for providers in underserved areas. No MediGrant plan could deny or exclude services on the basis of a preexisting condition. If a State contracted with a capitated organization or other entity and allowed the organization to impose preexisting condition exclusions, the State would have to provide alternate coverage for any covered services denied as a result.

It is the committee's intention that States protect against the impoverishment of the community spouses and adult children of institutionalized family members. The MediGrant plan explicitly requires States to describe in their State medical assistance plan provisions designed to protect against spousal impoverishment and similar circumstances, such as the impoverishment of adult children. It is the committee's view that States will provide medical assistance to institutionalized recipients in a manner designed both to meet the care needs of those recipients and preserve the financial well-being of their families. With regard to the adult children of institutionalized patients, it is the committee's intention that the policy under current law (section 1902(a)(17)(D)) shall apply to children of institutionalized parents. This policy provides that the States cannot require an adult child to contribute to the cost of nursing facility and other long-term care services.

In an October 4, 1995, letter to President Clinton, a number of Governors expressed their longstanding commitment to such protection. [Appendix B] In that letter, the Governors cited the fact that 36 States already exceed Federal standards and the remainder maintain generous exemptions protecting against impoverishment.

As further protection against family impoverishment, the MediGrant plan replaces Federal mandates passed in OBRA 1993 that require States to establish a mandatory State recovery program. This mandate has resulted in the seizure of family homes, farms, and businesses. Rather than employ this burdensome and destructive approach, the MediGrant plan empowers States to protect against family impoverishment and grants them unprecedented flexibility in designing similar eligibility safeguards.

Sec. 2112. Set-asides of funds for population groups

Current law.—No provision.

Explanation of provision.—States would be required to devote specified minimum percentages of total program spending to services for each of three groups: Low-income families, low-income elderly, and low-income blind and disabled. (Funds set aside for low-income families would have to be spent on families below 185 percent of poverty that included a pregnant woman or child.) For each group, the minimum percentage to be spent would be set equal to 85 percent of the average percentage of the State's Medicaid spending during fiscal years 1992 through 1994 devoted to mandatory services for members of that group who were required to be covered under Federal Medicaid law. (The percentage would be set at 75 percent in the case of a State that covered only mandatory services during the base period.)

For the elderly, there would be an additional set-aside for Medicare premium assistance, again based on the percentage of the State's spending that went for such assistance to mandatory individuals in the base period. For purposes of computing the base-period expenditures for the low-income elderly, all elderly persons who were in nursing homes would be treated as persons whose coverage was required. Thus, the computation of the base for elderly includes all current long-term spending for elderly who qualify under options that States may use for covering persons with higher income levels. One of these options is the medically needy option. Medically needy persons have incomes too high to qualify for cash welfare, but incur medical expenses that deplete their assets and incomes to levels that make them needy according to State-determined standards. The base also includes State spending under a special income rule referred to as the "300 percent rule", for extending eligibility to persons needing nursing home care. Under this rule, States were allowed to cover persons needing nursing home care so long as their income did not exceed 300 percent of the basic Supplemental Security Income [SSI] cash welfare payment. Nursing home payments for these two groups of nonpoor accounted for 61 percent of total program payments for all elderly beneficiaries and approximately 90 percent of all spending on nursing home services.[3]

In computing the base-period spending percentages, payments to disproportionate share hospitals [DSH] and to providers for emer-

[3] These calculations are based on a Congressional Research Service memo to the Commerce Committee entitled "Medicaid Nursing Home Expenditures for the Elderly" dated October 6, 1995.

gency care to illegal immigrants would not be treated as payments for mandatory services.

In providing eligibility for the disabled under the MediGrant Program set-aside, the committee urges States to consider the special circumstances of women and children with disabilities. It also urges States to provide services to meet the preventive and primary care needs of people with disabilities, including such measures as the prevention of illness through prophylactic and early intervention drugs and the prevention of transmission of illness through measures such as the administration of antiviral drugs to HIV-positive women during pregnancy. Such measures may prevent needless disability and unnecessary medical costs.

The MediGrant plan prohibits any State from utilizing MediGrant funds for any purpose other than medical assistance for low-income residents and support functions essential to the provision of that assistance. As a result, it is the committee's expectation that actual State MediGrant spending on the recipient populations designated by the set-asides will be significantly higher than is mandated be the set-asides. It is the committee's intention that the set-aside calculations serve as a floor, thereby protecting recipient populations who may be less well represented before State legislatures than are others.

A State could establish a set-aside percentage for a population group below the specified minimum percentages if it determined and certified to the Secretary that the health care needs of that group (and any related performance goals in the MediGrant plan) could be met with a lower level of expenditure. Such exceptions could not apply before fiscal year 1998, and determinations would have to be renewed at intervals of no more than 3 years. It is the committee's intention that the alternative set-aside be utilized only in cases where a State's innovations in health care service delivery have achieved sufficient efficiencies to enable it to serve a targeted recipient population at a cost below currently calculated estimates.

A State that spent less on any group than the required set-aside amount would not be found in substantial violation of the requirements if its spending for each of the three population groups was at least 95 percent of the required amounts and an independent actuary certified that the MediGrant plan was reasonably designed to result in expenditures of the required amounts.

Funds not required to be spent under the set-asides could be spent for additional medical assistance, program administration, or medically related services, defined as services not included in the definition of medical assistance (see part F) but related to or supporting the attainment of the strategic objectives and performance goals established under the State's MediGrant plan.

Sec. 2113. Premiums and cost-sharing

Current law.—States may impose nominal deductible and coinsurance requirements for services. Cost-sharing requirements may not apply to services to children, pregnancy-related services, or emergency, family planning, or hospice services; certain other restrictions apply. Premiums or enrollment fees are generally precluded except for the medically needy, for pregnant women and infants with income over 150 percent of poverty, or for certain families receiving work-transition coverage after loss of AFDC benefits.

Explanation of provision.—States would be permitted to impose premiums, copayments, coinsurance, or deductibles pursuant to a public schedule. Cost-sharing could be designed to encourage primary and preventive care and discourage unnecessary or less economical care and inappropriate use of emergency services. Amounts could be scaled to reflect economic factors, employment status, family size, availability of other health insurance, or participation in employment training, drug abuse or alcohol treatment, counseling, or other programs promoting personal responsibility. For a family below 100 percent of poverty and including a pregnant woman or child, no premium could be imposed and cost-sharing amounts would have to be nominal (except for cost-sharing designed to deter inappropriate use of services delivered through hospital emergency rooms or by other emergency providers).

Sec. 2114. Description of process for developing capitation payment rates

Current law.—States may enter into risk contracts with health maintenance organizations [HMO's] or comparable entities. Under a risk contract, the organization agrees to make available a specified set of medical services to an individual beneficiary in return for a fixed periodic payment (capitation) issued by the Medicaid Program on the beneficiary's behalf. Certain restrictions apply to a comprehensive contract, under which the organization has agreed to accept risk for any three of the mandatory Medicaid services, or for inpatient hospital care and any other mandatory service. Generally, no more than 75 percent of the enrollees of a contractor may be Medicaid or Medicare beneficiaries, and beneficiaries must ordinarily be permitted to disenroll at any time. Premium rates must be established on an actuarially sound basis. The Secretary has provided by regulation that rates may not exceed the amount which the State would have spent to provide the set of services covered by the organization to an equivalent group of beneficiaries not enrolled in the organization and continuing to receive care on a fee-for-service basis.

Explanation of provision.—If a State contracted with HMO's or similar entities on a risk basis for a package of services including at least inpatient hospital and physician care, the MediGrant plan would have to describe (a) the use of actuarial science in projecting expenditures and utilization for enrollees and setting capitation payment rates; (b) required qualifications for participating organizations; and (c) a process for dissemination to contractors of information on capitation rates and historical fee-for-service cost and utilization data. The State would also have to provide for public notice and an opportunity to comment on this information before each contract year; the notice would have to include the amounts of capitation payments made under the MediGrant plan in the preceding year and expected to be made in the coming year (unless exempt from disclosure under State law).

Sec. 2115. Construction

Current law.—Medicaid is an entitlement program; that is, Federal payments must be made to States that make expenditures in accordance with an approved State plan, and States must furnish covered services to individuals who meet eligibility requirements. The entitlement status of the current Medicaid Program permits eligible recipients and certain providers to sue State officials under Federal law. In addition to the eligibility, coverage, and reimbursement rules imposed on States by Medicaid law, State plans must meet three general requirements: Comparability (the services available to any categorically needy beneficiary in a State must generally be equal in amount, duration, and scope to those available to any other categorically needy beneficiary in the State); statewideness (generally, the amount, duration, and scope of coverage must be the same statewide); and selection of providers (beneficiaries must be free to obtain services from any institution, agency, pharmacy, person, or organization that undertakes to provide the services and is qualified to perform the services).

Explanation of provision.—The bill would specify that no provision would be construed as creating an individual or group entitlement to medical assistance under Federal law. In addition, the bill grants States flexibility in determining (a) coverage of any particular service or provider use and any level of payment; (b) geographical coverage area; and (c) selection of providers. The MediGrant plan also removes existing limitations on States ability to contract with managed care plans or individual providers on a capitated or other basis, to contract for case management or coordination services, or to set capitation rates on the basis of competition or negotiation.

Sec. 2116. Limitation on causes of action

Current law.—The current Medicaid statute permits lawsuits brought against State officials in Federal court. 42 U.S.C. 1983 authorizes such suits against State officials who, under color of State law, are alleged to have deprived any person of rights under Federal law or the Federal Constitution.

If a person sues a State official and seeks a Federal court to order that the State official comply with a Federal statute, such an order effectively operates against the State. Such an order, however, may operate prospectively only.

Explanation of provision.—The bill would remove the existing right of an applicant, beneficiary, provider, or health plan to sue a State official under 42 U.S.C. 1983 to require prospective enforcement of the Medicaid statute. However, the plan would have no effect on any action brought under State law.

PART C—PAYMENTS TO STATES

Sec. 2121. Allotment of funds among States

Current law.—Medicaid services and associated administrative costs are jointly financed by the Federal Government and the States. The Federal share of a State's payments for services is known as the Federal Medical Assistance Percentage [FMAP]. The Federal share of administrative costs is 50 percent for all States, though higher rates are applicable for specific items. Federal matching payments for States and the District of Columbia are open-ended; that is, there is no limit on the amount a State may receive for expenditures that are allowable under its approved Medicaid State plan. Payments for Commonwealths and territories are subject to annual maximums fixed in the statute.

Explanation of provision.—Beginning with fiscal year 1996, the bill would limit Federal obligations and outlays for each State to fixed allotments. (Obligations are binding agreements to make Federal payments, immediately or in the future. Outlays are actual payments to liquidate obligations.) The obligation allotments would include adjustments to reflect obligations incurred in 1 year that did not result in outlays until the following year.

For fiscal year 1996, the MediGrant outlay allotment for each State and the District of Columbia would be based on Federal Medicaid payments to the State in fiscal year 1994, increased by the ratio of $95,529,490,500 (the total available for outlay allotments to States and the District for fiscal year 1996) to $83,213,431,458 (the total of fiscal year 1994 Federal payments to the States and the District). For fiscal year 1997 and later years, the outlay allotment would be based on a formula allocation from a fixed pool of total MediGrant funds. A State could carry over any unused outlay allotment amount to subsequent years.

The pool for fiscal year 1996 would be $95.673 billion (this represents outlay allotments to the States and the District plus allotments to Commonwealths and territories). The pool would be $102.135 billion for fiscal year 1997, $106.221 billion for fiscal year 1998, $110.469 billion for fiscal year 1999, $114.888 billion for fiscal year 2000, $119.483 billion for fiscal year 2001, and $124.263 billion for fiscal year 2002. For later years, the pool amount would be the previous year's amount increased by the lesser of 4 percent or the growth in the consumer price index for all urban consumers [CPI–U] for the 12 months ending in June before the start of the year in question. The increase in the pool amount over that for the preceding year would be designated the "national MediGrant growth percentage" [NMGP].

For fiscal year 1997 and later years, each State's outlay allotment from the pool would equal a needs-based amount times a scalar factor, subject to certain floors and ceilings. The needs-based amount for a State would be the product of its aggregate need and its old Federal Medical Assistance Percentage for the previous year (FMAP; see below). The scalar factor would be a constant multiplier for all States used to ensure that floor and ceiling provisions, along with the allotments for Commonwealths and territories, do not cause total allotments to exceed the pool amount.

The State's aggregate need would be the product of four factors: residents in poverty, a case mix index, an input cost index, and national average spending per resident in poverty. Residents in poverty would be the average number of individuals in the State below the Federal poverty threshold in the most recent period of 3 calendar years for which data were available. The case mix index would equal the 3-year average ratio between the State's expected per recipient spending and national average per recipient spending, given the State's relative proportions of aged, disabled, and other recipients and assuming that the State's per recipient spending for each group was equal to the national average for that group. The case mix index could not be less than .9 or more than 1.15. The input cost index would be the 3-year average of the sum of .15 and the product of .85 and a hospital wage index. This index would equal the ratio between annual average wages for hospital employees in the State and the national average; it would be based on the area wage indices computed under Medicare's prospective payment system for inpatient hospital services (or a comparable index if the Medicare index should no longer be available). National average spending per resident in poverty would be computed for fiscal year 1997 using fiscal year 1994 data; for fiscal year 1998 and later years, the figure would be increased by the NMGP.

No State would receive an outlay allotment less than 102 percent of the State's allotment in the previous year. Beginning in fiscal year 1998, a higher floor would apply for certain States based on the one-time increase in the State's allotment from fiscal year 1996 to fiscal year 1997. For a State whose fiscal year 1996–97 increase was greater than 125 percent of the fiscal year 1997 NMGP, the floor for any year would be 104 percent of the previous year's allotment. For a State whose fiscal year 1996–97 increase was between 75 and 125 percent of the fiscal year 1997 NMGP, the floor would be 103 percent of the previous year's allotment. The allotment for a State could not exceed the State's allotment for the previous year by more than 133 percent of the NMGP, or 150 percent of the NMGP in the case of the 10 States with the lowest rates of Federal Medicaid spending per resident-in-poverty. Allotments for Commonwealths and territories would equal their previous year's allotments increased by the NMGP (in place of the percentage increases provided under current law).

To reduce variations in increases in outlay allotments over time, any State or the District could elect an alternative growth rate formula. A portion of the State's allotment for fiscal year 1996 could be deferred and applied to increase its allotment for one or more subsequent years, so long as the total of the increases did not exceed the amount deferred in fiscal year 1996. (Obligation allotments for the State would be adjusted accordingly.)

The Secretary would publish preliminary allotments for each fiscal year by April 1 of the preceding fiscal year. The General Accounting Office [GAO] would report to Congress by May 15 on the extent to which the allotments comply with statutory requirements. The Secretary would publish final allotments by July 1, taking into account the GAO analysis and explaining any changes from the preliminary allotments; the Secretary could not modify allotments thereafter. By August 1, GAO would report to Congress on the statutory compliance of the final allotments.

Sec. 2122. Payments to States

Current law.—The FMAP for each State is calculated annually based on a formula designed to provide a higher Federal matching rate to States with lower per capita incomes. No State may have an FMAP lower than 50 percent or higher than 83 percent. The FMAP for Commonwealths and territories is set at 50 percent.

Explanation of provision.—Subject to the allotment limits, payments to States for medical assistance and medically-related services would equal the State's spending for the services times the applicable FMAP. This would be the greater of the old FMAP, computed as under current law, or a new FMAP, (or, if less, the old FMAP plus 10 percentage points). The new FMAP would equal 100 percent minus the product of (a) 0.39 and (b) the ratio of the total taxable resources [TTR] ratio for the State to the aggregate expenditure need ratio for the State. The TTR ratio would be the ratio of the most recent 3-year average of the State's TTR, as determined by the Secretary of the Treasury, to the sum of the average TTRs for all States (for the District of Columbia, a per capita income ratio would be substituted). The aggregate expenditure need ratio would be the ratio of the State's aggregate expenditure need (as determined in computing the State's allotment; see above) to the sum of the aggregate expenditure needs for all States. The new FMAP could not be less than 40 percent or greater than 83 percent. The FMAP for Commonwealths and territories would be 50 percent. The FMAP for services in Indian Health Service facilities (and for specified facilities of Indian tribes that are not Indian Health Service facilities) would continue to be 100 percent; in addition, no State matching would be required for services to unlawful aliens. For administrative services, the Federal matching percentage would generally be 50 percent, with enhanced matching for specified expenditures as under current law. Provisions of current Medicaid law relating to periodic payments to States and treatment of overpayments and disallowances would be retained.

Sec. 2123. Limitation on use of funds

Current law.—Federal funds are available for expenditures made in accordance with the approved State plan. A State may exclude a provider on its own or in response to action by the Secretary; if the Secretary excludes a provider from Medicare, the State must exclude the provider from Medicaid. Payment for medically-related services that do not meet the definition of medical assistance is generally not permitted. There is no restriction on total State spending for administration. Federal matching payments are not available for services that would have been paid for by a private insurer but for a provision of the insurance contract making the insurer secondary to Medicaid. In order to receive Medicaid payments for outpatient prescription drugs, the manufacturer must provide cash rebates to Medicaid programs for the products Medicaid purchases. Manufacturers must also comply with section 8126 of title 38 of the United States Code (relating to prices of drugs procured by the Department of Veterans Affairs and other agencies), including entering into a master agreement with the Secretary of Veterans Affairs. Payments may be made for services to illegal aliens only in the case of emergency services. Payment for abortion services is required in cases of rape or incest, or when necessary to save the life of the mother.

Explanation of provision.—States could use Federal funds only to carry out the purposes of title XXI. Federal payments would not be made to a State for nonemergency services provided or ordered by providers excluded under the maternal and child health or social services block grant, Medicare, or Medicaid. Spending for medically-related services could not exceed 5 percent of total spending under the MediGrant plan. Spending for administration could not exceed the sum of $20 million plus 10 percent of total spending under the MediGrant plan. This limit would not apply, during the first two years the MediGrant plan was in effect, to spending for quality assurance, utilization review, and similar activities or to spending needed to comply with reporting requirements. As under current law, Federal matching would not be available for services that would have been paid for by a private insurer but for a provision of the insurance contract making the insurer secondary to Medicaid. The definition of allowable emergency services for illegal aliens would be clarified. Payment could not be made for prescription drugs unless the manufacturer had entered into a MediGrant master rebate agreement with the Secretary (see below) and was in compliance with current requirements section 8126 of title 38, including those for a master agreement with the Secretary of Veterans Affairs. Payment for abortions (or for health benefit coverage including abortions) would be permitted only to save the life of the mother, or in cases of rape or incest. Payment could not be made for drugs or services furnished to cause or assist in causing the death, suicide, euthanasia, or mercy killing of a person.

PART D—PROGRAM INTEGRITY AND QUALITY

Sec. 2131. Use of audits to achieve fiscal integrity

Current law.—States are required to make such reports as the Secretary may require, and comply with provisions to assure the correctness and verification of such reports. Regulations state that the HHS Office of Inspector General [OIG] periodically audits State operations in order to determine whether, first, the program is being operated in a cost-efficient manner, and, second, funds are being properly expended for the purposes for which they were appropriated. The OIG releases audit reports simultaneously to officials of the State and HHS.

Explanation of provision.—Each MediGrant plan would be required to provide for an annual audit of the State's medical assistance expenditures in compliance with chapter 75 of title 31, United States Code. If the Secretary determined that a State's audit was performed in substantial violation of the chapter 75 provision, the Secretary would be permitted to conduct a verification audit or require that the State do so. Within 30 days of completion of an audit or verification audit, the State would be required to provide a copy of the audit report to the Secretary along with the State's response to the auditor's recommendation. The State also would be required to make the audit report available for public inspection.

Each State would be required to maintain fiscal controls, accounting procedures, and data processing safeguards that are reasonably necessary to assure the fiscal integrity of the State's activities. The State's controls and procedures would be required to be generally consistent with generally accepted accounting principles as recognized by the Governmental Accounting Standards Board or the Comptroller General.

Each MediGrant plan would be required to provide that the records of any provider could be audited to ensure that proper payments were made under the plan.

Sec. 2132. Fraud prevention program

Current law.—States are required to operate systems for the detection of fraud. Where fraud is found, the law provides for civil and criminal penalties.

Explanation of provision.—To detect fraud and abuse by providers, beneficiaries, and others, each MediGrant plan would be required to have a program that includes the following. Certain program contractors and providers would be required to disclose ownership and control information to State agencies in accordance with sections 1124 and 1124(a) of the Social Security Act. An entity (other than an individual practitioner or a group of practitioners) would be required to supply information on ownership, controlling interests, and conviction of certain offenses upon request by the Secretary or the State agency. A State could exclude a provider from participation in the MediGrant plan on its own initiative, and would be required to exclude any entity when required to do so by the Secretary pursuant to section 1128 or 1128A of the act. Whenever a provider was terminated, suspended, sanctioned, or prohibited from participating under a State's plan, the State agency would be required to notify the Secretary and, in the case of a physician, the State medical licensing board. States would be required to provide information and access to information respecting sanctions taken against practitioners and providers by State licensing authorities.

Sec. 2133. Information concerning sanctions taken by State licensing authorities against health care practitioners and providers

Current law.—The law includes details on the information reporting requirements respecting sanctions taken against practitioners and providers by State licensing authorities.

Explanation of provision.—The provision is identical to the current law provision. Each State would be required to have in effect a system for reporting and providing access to information for use by the Secretary and other officials concerning licensing revocations and other sanctions taken against providers and practitioners by State licensing authorities, peer review organizations, or accreditation entities. A State would be required to report any adverse action taken, whether a provider had surrendered a license or left the State, any other loss of license, and any negative action taken by a reviewing authority. The State would be required to provide the Secretary with access to whatever documents the Secretary needed to determine the facts and circumstances concerning the actions taken. Such information would have to be provided under arrangements made by the Secretary in the form the Secretary determined to be appropriate to, first, provide for the Secretary's activities, and second, provide information to other specified authorities in order to protect their programs and services.

The Secretary would be required to safeguard the confidentiality of information furnished. However, any party authorized to disclose information would be permitted to do so. In implementing this section, the Secretary would be required to provide for maximum coordination of section 422 of the Health Care Quality Improvement Act of 1986.

It is the committee's intention that paragraph (a)(1)(D) of this section shall pertain to such consequential negative actions or findings as those related to the provision of direct patient care by a practitioner or entity.

Sec. 2134. State MediGrant fraud control units

Current law.—Each State is required to have a Medicaid fraud control unit, independent of the State Medicaid agency, unless the State demonstrates that operation of such a unit would not be cost-effective because minimal fraud exists, and beneficiaries will be protected from abuse and neglect without such a unit. Each unit is required to submit an annual report to the Secretary.

Explanation of provision.—Each MediGrant plan would be required to provide for a State MediGrant fraud control unit [FCU] unless the State demonstrated that such a unit would not be cost-effective because minimal fraud existed, and that beneficiaries would be protected from abuse and neglect without such a unit. The FCU would be required to be separate and distinct from the State agency responsible for the operation and administration of the MediGrant plan. It would have to be a part of the State attorney general's office or coordinate with that office. It would be required to have statewide prosecutorial authority or the ability to refer to local prosecutors. The FCU would investigate and prosecute violations of State fraud laws, and review and prosecute cases involving neglect or abuse of beneficiaries in nursing homes and other facilities. It would be required to provide for the collection of overpayments it had discovered were made to health care providers. It would be required to employ auditors, attorneys, investigators, and other necessary personnel.

Sec. 2135. Recoveries from third parties and others

Current law.—States are required to ascertain the potential third-party liability for payment of a beneficiary's medical claims and, where legal liability exists, seek reimbursement from the third party unless it would not be cost-effective to do so. States generally are limited in the circumstances which permit them to place liens against property or seek other recovery from States.

Explanation of provision.—Each MediGrant plan would be required to ascertain the legal liability of third parties to pay for care and services available under the plan and seek reimbursement to the extent of legal liability unless the cost of recovery was expected to exceed the amount of reimbursement.

MediGrant plans would be required to prohibit a provider from refusing to furnish a covered service to a beneficiary because of a third party's potential liability for the service, and from trying to collect payment from a beneficiary that exceeded payment that would be made under the plan. For violation of the collection provision, a MediGrant plan could provide for a payment reduction up to three times the amount sought to be collected.

States would be required to prohibit any health insurer, in enrolling an individual or in making payments for benefits, from taking into account that the individual was eligible for or was provided medical assistance under a MediGrant plan.

A State would be required to have laws in effect under which the State is considered to have acquired the rights of an individual to payments by a party that is liable for the individual's health care items and services. Each State would be required to provide for mandatory assignment of rights of payment for medical support and care to beneficiaries.

Each State with a MediGrant plan would be required to have in effect laws relating to medical child support. Each State would have to prohibit an insurer from denying enrollment of a child because the child was born out of wedlock, was not claimed as a dependent on the parent's Federal income tax return, or did not reside with the parent or in the insurer's area. In a case in which a parent was required by a court or administrative order to provide health coverage for a child, and the parent was eligible for family health coverage, State laws would have to require the employer and insurer to permit the parent to enroll the child upon application by either parent or by the State child support agency, and limit the circumstances under which the insurer could disenroll such a child. State laws would be required to prohibit an insurer from imposing requirements on a State agency that has been assigned the rights of an individual that are different from requirements applicable to an agent of any other covered individual; require an insurer, in the case of a child who has health coverage through the insurer of a noncustodial parent, to provide information to the custodial parent; permit the custodial parent to submit claims for covered services without the approval of the noncustodial parent, and make payment on claims to the custodial parent, the provider, or the State agency; permit the State agency to garnish the employment income of, and require withholding amounts from State tax refunds to, any person who is required by court or administrative order to cover the medical costs of a child who is eligible for medical assistance, has received payment from a third party for the costs of the child's services, and has not used the payment to reimburse the appropriate party.

A State would be permitted to take appropriate action to adjust or recover from an individual or the individual's State amounts paid as medical assistance under a MediGrant plan.

Sec. 2136. Assignment of rights of payment

Current law.—At each eligibility determination, an applicant, as a condition of eligibility, must assign to the State any rights to medical support and payment.

Explanation of provision.—As a condition of eligibility for medical assistance under a State's MediGrant plan, an individual would be required to assign to the State any rights to medical support and payment for medical care from any third party of the individual or any other person who is eligible and on whose behalf the individual has the legal authority to execute an assignment of such rights. An individual would be required to cooperate with the State agency in establishing paternity of a child born out of wedlock and in obtaining support and payments for the individual and child unless the individual was a pregnant woman or was found to have good cause for refusing to cooperate as determined by the State. An individual would be required to cooperate with the State in identifying and providing information to assist the State to pursue any liable third party unless the individual had good cause for refusing to cooperate as determined by the State. The State would be required to provide for entering into cooperative arrangements (including financial arrangements) with any appropriate agency of any State and with appropriate courts and law enforcement officials, to assist the agency or agencies administering the State plan with respect to the enforcement and collection of rights to support or payment that had been assigned.

Any amount collected by the State under an assignment would be retained by the State to reimburse it for payments made on behalf of an individual with respect to whom the assignment was executed (with appropriate reimbursement to the Federal Government of its share of the payment). The remainder of such amount collected would be paid to the individual.

Sec. 2137. Quality assurance standards for nursing facilities

Current law.—OBRA 87 comprehensively revised Medicaid requirements for nursing homes participating in the program. These provisions, collectively referred to as nursing home reform law, have three major parts: First, requirements that nursing homes must meet in order to be certified to participate in Medicaid, including requirements about assessments of residents, available services, nurse staffing, nurse aide training, and resident rights; second, provisions revising the survey and certification process that State survey agencies must use for determining whether nursing homes comply with the requirements for participation; and third, provisions that expand the range of sanctions and penalties that States and the Secretary of HHS may impose against nursing homes found to be out of compliance with the requirements for participation.

Explanation of provision.—OBRA 87 nursing home reform provisions would be replaced with new requirements. State plans would be required to establish and maintain standards in the following areas for nursing facilities providing services under the State's program: the treatment of resident medical records; policies, procedures, and bylaws for operation; quality assurance systems; resident assessment procedures, including care planning and outcome evaluation; the assurance of a safe and adequate physical plant for the facility; staff qualifications; and utilization review.

Standards for nursing facilities would also be required to provide for the protection and enforcement of resident rights, including rights to exercise the individual's rights as a resident of the facility and as a citizen or resident of the United States; to receive notice of rights and services; to be protected against the misuse of resident funds; to be provided privacy and confidentiality; to voice grievances; to examine the results of State certification program inspections; to refuse to perform services for the facility; to be provided privacy in communications and to receive mail; to have the facility provide immediate access to any resident by any representative of the State's certification program, the resident's individual physician, the State long-term care ombudsman, and any person the resident has designated as a visitor; to retain and use personal property; to be free from abuse, including verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion; and to be provided with prior written notice of a pending transfer or discharge.

States would be required to promulgate standards through the State's legislative, regulatory, or other processes, and they could take effect only after the State had provided the public with notice and an opportunity for comment.

State plans would also be required to provide for the establishment and operation of a program for the certification of nursing facilities that meet specified standards as well as the decertification of those facilities that fail to meet the standards. States would be required to ensure public access to the certification program's evaluations of participating facilities, including compliance records and enforcement actions and other reports by the State regarding ownership, compliance histories, and services provided by certified facilities. States would be required to audit their expenditures under the program, not less often than every 4 years, through an entity designated by the State which is not affiliated with the program.

States would be required to impose certain sanctions against nursing facilities not meeting requirements. If a State determined that a certified nursing facility no longer substantially met specified requirements and further determined that the facility's deficiencies immediately jeopardized the health and safety of residents, then the State would be required, at a minimum, to terminate the facility's certification for participation. If the facility's deficiencies did not immediately jeopardize the health and safety of residents, the State could, in lieu of termination, provide lesser sanctions, including denial of payment for persons admitted after a specified date.

States could not impose sanctions until a facility has had a reasonable opportunity to correct its deficiencies, following the initial determination that it no longer substantially met the requirements for certification and has been given reasonable notice and opportunity for a hearing. A State's decision to deny payment for new admissions would be effective only after notice to the public and the facility, as may be provided for by the State. Denial of payment for new admissions would end when the State found that the facility was in substantial compliance (or was making good faith efforts to achieve substantial compliance). Facilities would, however, be required to be in compliance by the end of the 11th month following the month when the decision to deny payments becomes effective. If facilities did not substantially meet the requirements by that time, States would be required to terminate their certification for participation.

It is the committee's intention in reporting these provisions to strengthen nursing home standards by replacing existing federalized standards with strong provisions requiring substantial State oversight. Current nursing home standards have been bureaucratically burdensome and have forced States to divert tens of millions of dollars that could otherwise have funded patient care into administration instead. After years lost to Federal rulemaking, the standards established in the Omnibus Budget Reconciliation Act of

1987 are widely perceived today as a centralized effort to meet the needs of residents living in very different States. This perspective has been shared by Democrat and Republican Governors alike. In fact, then-Governor Bill Clinton helped formulate and pass a National Governors Association Policy Statement in 1990 that called upon Congress to give States greater flexibility in administering nursing home standards. [Appendix A] The MediGrant plan gives States this flexibility and conditions their receipt of Federal funding upon their complete implementation of extensive nursing home quality, safety, and patient rights standards.

Sec. 2138. Other provisions promoting program integrity

Current law.—Each State, and the Secretary, are required to make available to the public information respecting all surveys of nursing facilities within 14 days after such information is made available to the facilities. Copies of cost reports, Statements of ownership, and other information required to be disclosed also must be made public.

Each State Medicaid plan must provide for agreements with all providers of services to keep such records as are necessary to fully disclose the extent of the services provided to Medicaid recipients, and to furnish information regarding payments claimed for providing services.

Explanation of provision.—State agencies responsible for surveying health care facilities or organizations would be required to make public, in readily available form and place, pertinent findings on the compliance of the facility or organization with the requirements of law. Persons or institutions providing services under the State's plan would be required to keep such records (including ledgers, books, and original evidence of costs) as are necessary to fully disclose the extent of the services provided, and to furnish information about payments claimed, as the State may from time to time request.

PART E—ESTABLISHMENT AND AMENDMENT OF STATE MEDIGRANT PLANS

Sec. 2151. Submittal and approval of MediGrant plans

Current law.—Each State is required to establish and maintain a State plan for medical assistance that is approved by the Secretary. The process for approval of State plans and State plan amendments is set forth in Medicaid regulations, not in statute.

Explanation of provision.—States would be required to submit to the Secretary a MediGrant plan that meets the requirements of title XXI. A State with a title XXI Fiscal Year 1996 allotment of more than $10 billion would be required to have specific authorization of its State legislature to submit a plan. Unless the Secretary found that a plan substantially violated the requirements of title XXI, the plan would be approved and would be effective beginning with the calendar quarter specified in the plan, but no earlier than the first calendar quarter that begins at least 60 days after the plan is submitted.

Sec. 2152. Submittal and approval of plan amendments

Current law.—According to regulation, States may submit amendments to their Medicaid plans at any time, and are considered approved unless written notice is sent to the State within 90 days.

Explanation of provision.—A State would be permitted to submit an amendment to its MediGrant plan at any time. However, any amendment that would eliminate or restrict eligibility or benefits under the plan could not take effect before it was transmitted to the Secretary, unless there was prior or contemporaneous public notice of the change, as provided under State law, nor could it be effective for longer than a 60-day period unless the amendment had been transmitted to the Secretary before the end of the period. Any other amendment could not remain in effect after the end of a State fiscal year (or if later, the end of the 90-day period on which it becomes effective) unless the amendment had been transmitted to the Secretary. These requirements would not apply to an amendment submitted on a timely basis in response to an order of a court or the Secretary.

Sec. 2153. Process for State withdrawal from program

Current law.—States can withdraw from Medicaid, but there is no formal process included in current law.

Explanation of provision.—A State could rescind its plan and discontinue participation in the program at any time after providing 90 days prior notice to the public and to the Secretary. Such discontinuation would not apply to Federal payments to States for expenditures made for items and services furnished under the plan before the effective date of the discontinuation.

Sec. 2154. Sanctions for substantial noncompliance

Current law.—If the Secretary finds, after reasonable notice and opportunity for hearing, that either the plan does not comply with the provisions of Federal law, or that in administration of the plan there is a failure to comply substantially with any provision(s), then the Secretary is required to notify the State that payments will be withheld, in whole or in part, until the Secretary is satisfied regarding the State's compliance. (Under Medicaid regulations, these duties and responsibilities are delegated to the Administrator of the Health Care Financing Administration [HCFA] in HHS.)

Explanation of provision.—The Secretary would be required to review promptly MediGrant plans and plan amendments to determine if they substantially comply with requirements. If the Secretary determines that a plan or plan amendment substantially violates the requirements and, within 30 days of submittal, provides written notice to the State, the Secretary would be required to issue an order specifying that the plan or amendment would not be effective at the end of a 30-day period (or 120 days in the case of the initial submission of the MediGrant plan). Before making such a determination, the Secretary would be required to consult with the State and consider any clarifications and additional information submitted. The Secretary would be required to explain and justify any determination inconsistent with any previous determination. A plan or amendment could only be considered to substantially violate a requirement if a provision were material and substantial in nature and effect, and were inconsistent with an express requirement. Failure to meet a strategic objective or performance goal would not be considered a substantial violation. A State could appeal the Secretary's determination through administrative and judicial procedures.

Sec. 2155. Secretarial authority

Current law.—No provision. Medicaid regulations, however, specify the State and the HCFA may, at any time, negotiate to resolve issues.

Explanation of provision.—The Secretary would be permitted to negotiate a satisfactory resolution to any dispute concerning the approval of a plan or the compliance of a plan. In cases of dispute between the Secretary and a State, the Secretary would, whenever practicable, engage in informal dispute resolution in lieu of formal enforcement or sanctions. The Secretary would be prohibited from delegating authority for approval of plans other than to the Administrator of the Health Care Financing Administration. The Administrator would be prohibited from making any further delegation of such authority. The Secretary would be required to administer the program only through a prospective formal rulemaking process, including issuing notices of proposed rule making, publishing proposed rules or modifications to rules in the Federal Register, and soliciting public comment.

PART F—GENERAL PROVISIONS

Sec. 2171. Definitions

Current law.—Medical assistance means payment of part or all of the cost of a number of specified services. States are required to provide some services (including hospital, physicians', and laboratory and x-ray services) and permitted to cover others (such as prescription drugs and intermediate care facilities for the mentally retarded). The law also provides that medical assistance expenditures may include payments for Medicare cost-sharing; Medicare Part B premiums for certain persons; payments for group health plan premiums, deductibles, and coinsurance and certain other cost-sharing obligations; and payments to Indian Health Service facilities for services provided to eligible recipients. The law excludes any payments for care or services for first, an inmate of a public institution (except as a patient in a medical institution) or second, payments for care for an individual under age 65 who is a patient in an institution for mental diseases, except that States may cover inpatient psychiatric services for individuals under age 21.

The term child means an individual under 19 years of age. The term "pregnant woman" includes a woman during the 60-day period beginning on the last day of pregnancy. The term "poverty line" means the income official poverty line as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

Explanation of provision.—Medical assistance would be defined as including an extensive list of services similar to those specified under current law, and, in addition, enabling services to increase accessibility to primary and preventive services. Eligible low-income individual would mean an individual who has been determined eligible by the State and whose family income does not exceed a percentage specified in the plan that is not greater than 300 percent of the poverty line. In determining income, States would be permitted to exclude costs incurred for medical care. Medicare cost sharing would include Medicare premiums, coinsurance, and deductibles. Definitions of child, pregnant woman, and poverty line would be the same as in current law.

It is the committee's intention that the definition of medical assistance shall include services provided by a Christian Science sanatorium (nursing facility) and a Christian Science visiting nurse organization, listed and certified by The First Church of Christ, Scientist, in Boston, MA, or the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc., and services provided in a home setting by a Christian Science nurse listed in the Christian Science Journal.

Sec. 2172. Treatment of territories

Current law.—For American Samoa and the Northern Mariana Islands, the Secretary is authorized to waive or modify any requirement other than a waiver of the Federal matching share of expenditures, the annual expenditure limit, or the requirement that payment may be made only with respect to amounts expended for certain care and services.

Explanation of provision.—The Secretary's waiver authorization would be extended to include Puerto Rico, Guam, and the Virgin Islands.

Sec. 2173. Description of treatment of Indian health service facilities

Current law.—For services provided to Medicaid beneficiaries in Indian Health Service facilities, the Federal matching rate to State Medicaid Programs is 100 percent. Indians may qualify for Medicaid the same as members of any other population groups by meeting the categorical and financial standards.

Explanation of provision.—In a State in which there is at least one Indian Health Service facility, the MediGrant plan would have to describe first, what provision, if any, has been made for payment of items and services furnished by the facilities, and second, how medical assistance will be provided to eligible Indians, as determined by the State in consultation with appropriate Indian tribes and tribal organizations. For services provided to Indians, the Federal matching rate to State Medicaid Programs would be 100 percent, as provided in section 2122.

Sec. 2174. Application of certain general provisions

Current law.—Certain sections of title XI of the Social Security Act apply to Medicaid.

Explanation of provision.—The proposal would clarify that certain sections of title XI would apply to MediGrant.

Sec. 2175. Requirements for manufacturers of outpatient prescription drugs

Current law.—Federal reimbursement to States for covered outpatient prescription drugs is available only for products of a manufacturer that has agreed to grant rebates to Medicaid programs for the manufacturer's products that they purchase. A drug manufacturer must comply with the provisions of section 8126 of title 38 of the U.S. Code (relating to prices of drugs procured by the Department of Veterans Affairs and other Federal agencies), including entering into a master agreement with the Secretary of Veterans Affairs.

Explanation of provision.—No Federal funds would be available to a State for covered outpatient drugs unless the drug's manufacturer had entered into a MediGrant master rebate agreement with the Secretary and is complying with the provisions of section 8126 of title 38 of the U.S. Code, including entering into a master agreement with the Secretary of Veterans Affairs.

States would not be required to participate in the MediGrant master rebate agreement. States would be permitted to enter into rebate agreements on their own. States could opt to cover drugs for which there was no rebate agreement in effect. If a State had a rebate agreement already in effect which provided for a minimum rebate equal to or greater than the minimum rebate that would be paid under the master agreement, then at the State's option the agreement would be considered to meet the requirements of the MediGrant master rebate agreement and the State would be considered to have elected to participate in the master agreement.

Under the MediGrant master agreement, a drug manufacturer would be required to provide a rebate to each State not later than 30 days after receipt of certain information from participating States. Not later than 60 days after the end of a rebate period, each State participating in the master rebate agreement would be required to report to each manufacturer, with a copy to the Secretary, information on the drugs for which the State made payment during the period. A manufacturer would be permitted to audit the State's information. Adjustments would be made as necessary.

Not later than 30 days after the end of a rebate period, each manufacturer subject to the master agreement would be required to report to the Secretary on the average manufacturer price [AMP] and the best price of each of the manufacturer's covered products. In addition, within 30 days of entering into the agreement, the manufacturer would have to report the AMP as of October 1, 1990, for each of the manufacturer's covered outpatient drugs. The Secretary would be permitted to verify the manufacturer's prices and impose a civil monetary penalty of up to $10,000 for refusal of the Secretary's request for information. For failure to provide timely information, the penalty would be $10,000 paid to the Treasury for each day information was not provided. After 90 days, the agreement would be suspended until the information was reported. For the provision of false information, a civil money penalty of up to $100,000 could be imposed in addition to other penalties. Information disclosed by manufacturers or wholesalers would be confidential. The Secretaries of HHS and Veterans Affairs and State agencies or contractors would be prohibited from disclosing information in a form that discloses the identity of a specific manufacturer or wholesaler or their prices except as the Secretary determined appropriate, and to permit review by the Comptroller General and the Congressional Budget Office.

Unless terminated, a MediGrant master rebate agreement would be effective for at least 1 year and automatically renewed for 1 year. The Secretary could terminate an agreement for violation of requirements or for good cause. A manufacturer could terminate participation for any reason. In case of termination, another agreement could not be entered into with that manufacturer for at least 1 calendar quarter, unless the Secretary found good cause for earlier reinstatement.

The provision provides for a basic rebate and an additional rebate. The basic rebate would be based on the number of products paid for by the State during the period, and the greater of, first, the minimum rebate percentage, or second, the difference between the AMP and the best price. The minimum rebate percentage would be 15.1 percent of the AMP. The best price would be the lowest price available from the manufacturer during the rebate period. The additional rebate amount would be based on the amount, if any, by which the AMP of a product exceeded the product's AMP as of July 1, 1990, increased by the increase in consumer price index for all urban consumers since September 1990.

For certain drugs, including a brand name drug that a physician has certified as medically necessary, the minimum rebate amount would be 11 percent of the AMP. The Secretary may, upon request of a manufacturer, limit the rebate amounts of covered products of which most were dispensed to inpatients of nursing facilities.

A State that participated in the master rebate agreement would be permitted to subject a product to prior authorization controls that meet specified requirements, exclude or restrict coverage of specified drugs or classes of drugs that are updated periodically by the Secretary, establish formularies that meet specified requirements, and impose minimum and maximum quantities on prescriptions and refills.

A State would be permitted to operate a drug use review program under standards established by the State. The Secretary would be required to encourage each State to establish a point-of-sale electronic system for processing claims for covered outpatient drugs. The Secretary would be required to submit annual reports on the drug rebate program to the House Committee on Commerce, the Senate Committee on Finance, and the Senate Committee on Aging.

The requirements of the MediGrant master rebate agreement would not apply to covered outpatient drugs dispensed by a capitated health care organization or a hospital or nursing facility that uses a formulary. Amounts paid by such entities could be included in the determination of best price.

If the MediGrant plan of a State participating in the master rebate agreement included coverage of drugs that could be sold without a prescription (known as over-the-counter drugs), those drugs would be regarded as covered outpatient drugs for purposes of the State's participation in the agreement.

With respect to the provision in this section permitting the exclusion of fertility drugs from coverage, it is not the intention of this Committee to classify products which treat the male disease of erectile dysfunction as a fertility drug.

Section 16002. Termination of current program and transition

Effective on the date of enactment, title XIX would cease to be an entitlement program for individuals and Federal obligations to States would be limited to statutory obligation allotments for fiscal year 1996. The Secretary would be prohibited from entering into any obligation with a State for expenses incurred on or after the earlier of October 1, 1996, or the first day the State's plan under title XXI was effective. A State that submitted claims for payment under title XIX after the date of enactment would be deemed to have accepted the obligation limitation. States' claims for obligations incurred before the date of enactment would have to be submitted for payment by June 30, 1996.

Any cause of action that required a State to establish or maintain minimum payment rates under title XIX that was not final as of the date of enactment would not be continued. For any payment made under title XIX before October 1, 1995, for which disallowance was not taken or not completed by that date, the Secretary would be required to discontinue the disallowance proceeding. If the disallowance had been taken as of the date of enactment, the Secretary would be required to rescind any effected payment reductions and return payments to the State.

The Vaccines for Children program would be repealed effective on the date of enactment. Although the repeal would not affect the distribution of vaccines purchased and delivered before enactment, no further vaccine purchases could be made under any title XIX contract.

A MediGrant plan under title XXI would be added to the term "State health care program." The role of the Inspector General under title XIX would continue under title XXI.

It is the Committee's intention that the existing moratorium against classifying as institutions for mental diseases certain low-cost community hospitals serving a substantial proportion of medical assistance patients be extended until the first quarter in which a State's MediGrant plan comes into effect. This treatment is needed to prevent the disruption of services for patients being served by institutions currently operating under the moratorium.

TECHNICAL APPENDIX

Explanation of MediGrant computation of State payments

The MediGrant Program would limit Federal matching payments to each State to a fixed allotment. The first section of this appendix explains how the State allotments are computed. Subject to allotments, payments to the State out of those allotments are based on a new Federal medical assistance percentage [New FMAP] which is explained in the second section of this appendix.

Allotment of funds among States

Overview.—This section presents a step-by-step description of the computation of allotments of funds. The allotment is based on the States sharing a fixed pool of funds. In fiscal year 1996, States shares of the pool are based on the shares of the fiscal year 1994 base year Medicaid grant to the State. Beginning in fiscal year 1997, a needs-based State allotment formula is used. The needs-based formula is intended to provide a measure of the relative needs of States for Medicaid expenditures. The needs-based allotment is then subject to "floors" and "ceilings" which are transition rules intended to ensure that no State would be subject to sudden large shifts in payments from year-to-year and that no State will lose funds. Finally, the formula computation uses proportional scaling to ensure that the combination of the needs-based formula together with floors and ceilings produces State allotments that sum exactly to the overall funding level for the program in each fiscal year.

Pool of funds.—The pool available to be allotted would be $95.673 billion for fiscal year 1996, $102.135 billion for fiscal year 1997, $106.221 billion for fiscal year 1998, $110.469 billion for fiscal year 1999, $114.888 billion for fiscal year 2000, $119.483 billion for fiscal year 2001, and $124.263 billion for fiscal year 2002. For later years, the pool amount would be the previous year's amount increased by the lesser of 4 percent or the growth in the consumer price index for all urban consumers [CPI–U] for the 12-month period ending in June before the start of the year in question. Pool amounts to be allocated among the 50 States and the District of Columbia would be reduced by the amount of allotments to Commonwealths and territories. The percentage growth in the pool amount over the pool amount in the preceding year would be designated the "national Medicaid growth percentage" [NMGP]. This percentage is used in floors and ceilings described below.

Fiscal year 1996 allotment.—For fiscal year 1996, the State grant amount is to be computed so that every State allocation is proportional to the fiscal year 1994 base year spending amounts. Every State's allocation equals its fiscal year 1994 base year spending amount multiplied by the ratio of the available pool of funds in fiscal year 1996 to the sum of the States fiscal year 1994 base year spending amounts. (That ratio is approximately 1.14, reflecting a 14 percent increase from 1994 to 1996).

Base-year spending (fiscal year 1994).—The fiscal year 1994 base year Federal Medicaid expenditures are from the HCFA Form 64 reports for the four quarters in fiscal year 1994. The expenditure amount to be used for each State is the greater of the amount reported on line 11 or line 6 (proportionally scaled up so that the line 6 amounts sum to the line 11 total). Line 6 represents current expenditures, that is, the amount spent during each quarter that applies solely to that quarter's activity. Line 11 represents net expenditures, which is current expenditures with various adjustments to account for such items as: prior period claims, collections received during the quarter, Federal audit and overpayments. HCFA prepares a year-end report, the Medicaid Financial Management Report, summarizing the HCFA 64 reports from each State for each quarter of that year. As noted, these data are to be used in computing the fiscal year 1996 amounts and in computing the floor and ceiling amounts in subsequent fiscal years.

Commonwealths and territories.—Beginning with fiscal year 1997, the Commonwealths and territories will have percentage increases equal to the national Medicaid growth percentage [NMGP] defined above under "Pool Amounts." Because comparable data are unavailable, the needs-based formula described below could not be applied to the Commonwealths and territories. Unless otherwise specified, "State" in this Appendix refers to the 50 States and the District of Columbia.

Description of the needs-based allotment formula

Needs-based formula allotment.—The needs-based formula allotment [NBFA] for a State is the product of State aggregate expenditure need, the "old" FMAP, and a constant multiplier called the adjustment factor. As explained subsequently, the adjustment factor proportionally increases or decreases the NBFA so that, when these amounts are subject to the floors and ceilings, all State allotments sum to the total amount available. If a State is not subject to any floor or ceiling, the NBFA is that State's allotment. If a State's NBFA amount would represent growth in funding in excess of a growth ceiling or less than a floor, the State's allotment is instead set by that ceiling or floor rule.

Each State's needs-based formula allotment [NBFA] is computed using the following formula:

$$\begin{matrix}\textit{State}\\ \textit{NBFA}\end{matrix} = \begin{pmatrix}\textit{State Aggregate}\\ \textit{Expenditure Need}\end{pmatrix} X \begin{pmatrix}\textit{Old}\\ \textit{FMAP}\end{pmatrix} X \begin{pmatrix}\textit{Adjustment}\\ \textit{Factor}\end{pmatrix}$$

State aggregate expenditure need.—A State's aggregate need is an amount that represents what the total cost would be for the State to provide MediGrant health services to the State's poverty population. Aggregate need is the product of four factors: poverty count, a caseload cost index, an input cost index, and the national average spending per person in poverty.

$$\begin{pmatrix}\textit{State Aggregate}\\ \textit{Expenditure Need}\end{pmatrix} = \begin{pmatrix}\textit{Poverty}\\ \textit{Count}\end{pmatrix} X \begin{pmatrix}\textit{Caseload}\\ \textit{Cost}\\ \textit{Index}\end{pmatrix} X \begin{pmatrix}\textit{Input}\\ \textit{Cost}\\ \textit{Index}\end{pmatrix} X \begin{pmatrix}\textit{U.S. Spending}\\ \textit{Per Person in}\\ \textit{Poverty}\end{pmatrix}$$

Poverty count.—The poverty count represents the average number of persons in poverty in the United States for the 3 most recent years for which data is available. The poverty count data are from the Current Population Survey conducted by the Census Bureau in March of each year from which the Bureau calculates the number of persons in poverty for the prior calendar year. Census poverty estimates for a single year are based on a survey of a sample of the total State population. Because of the small sample size, annual estimates of the poverty count could change substantially from year to year, so an average of the 3 most recent years is used to smooth such variation.

Caseload cost index.—The caseload cost index represents each State's caseload by eligibility category weighted by the U.S. average spending for that category. Based on caseload data by eligibility category from the HCFA 2082 reports prepared by the States for the most recent year for which data is available, the number of recipients served is grouped into three categories representing: elderly, blind and disabled, and "other" which are essentially children and mothers on AFDC and pregnant women. Excluded from this grouping are any recipients whose eligibility category is reported by States as "unknown". Expenditures for these same groups are also obtained from the HCFA 2082 reports on the basis of reported vendor payments for each eligibility category. For each State, a case-mix weighted cost is calculated by multiplying the State's percentage of recipients in each of the three categories by the U.S. average spending based on vendor payments for that category, then adding together the calculated amounts for the three categories. Each State's case-mix weighted cost is then divided by the U.S. average spending based on vendor payments for all categories to derive an index for each State.

The caseload cost index described in the preceding paragraph is to be computed for each State for the 3 most recent years for which the data are available. For each State, these three indices are then averaged, and that 3-year average is then constrained so it is not less than 0.9 and does not exceed 1.15 (the index is constructed so that 1.00 is the value equaling the U.S. average cost mix). That constrained 3-year average is used in computing State aggregate expenditure needs.

Input cost index.—The input cost index is a factor representing the cost of labor and other inputs used to provide health care services. Data is obtained from HCFA representing wages paid and hours worked in hospitals participating in the Medicare prospective payment system. Based on the total wages paid and hours worked as reported by each participating hospital in a State, an average annual wage per hour is calculated for the State. This average wage rate for each State is then divided by the U.S. average annual wage rate to produce an index for each State.

The index described in the preceding paragraph is computed for each State in each of the 3 most recent years for which the data are available, and for each State an average of those three indices is computed. The input cost index used in the formula for State aggregate need is based on multiplying the 3-year average wage index by 85 percent and adding to that 15 percent of one (1.00) to reflect costs of inputs that are uniform nationwide, such as the cost of prescription drugs.

U.S. spending per person in poverty.—U.S. spending represents total Federal and State Medicaid spending based on line 11 of the HCFA form 64 reports from each State and the District of Columbia for the most recent year for which data is available from HCFA. This amount is divided by the U.S. average number of persons in poverty for the 3 most recent years data. This term is a constant; it is the same value for every State.

Old Federal Medical Assistance Percentage.—A State's "old" Federal Medical Assistance Percentage [OldFMAP] is the Federal share of total Medicaid spending as calculated by HCFA under current law.[4] (This is not the use of historical FMAP values; the OldFMAP formula would continue to be computed as more current data becomes available). OldFMAP equals one minus the product of .45 multiplied by square of the ratio of State per capita personal income [PCI] to the U.S. average PCI. This formula is expressed as:

$$OldFMAP = 1.0 - 0.45\left(\frac{PCI_{state}}{PCI_{us}}\right)^2$$

As provided in current law, the FMAP for any State shall not be less than 50 percent or greater than 83 percent.

Description of the floor and ceilings

The needs-based formula allotment of each State is constrained by floors and ceilings which are collectively intended to moderate year-to-year changes and, in particular, to ensure that no State loses funds compared to the previous year. Three floors are provided:

No State's growth from the previous year can fall below 2 percent.

Beginning in fiscal year 1998, if the percentage growth in a State's allotment from fiscal year 1996 to fiscal year 1997 at least 125 percent of the national MediGrant growth percentage [NMGP], then the State's growth percentage in any fiscal year cannot fall below 4 percent.

Beginning in fiscal year 1998, if the percentage growth in a State's allotment from fiscal year 1996 to fiscal year 1997 is at least 75 percent, but less than 125 percent, of the NMGP, then the State's growth percentage in any fiscal year cannot fall below 3 percent.

Two ceilings are provided:

No State's growth in allotment is to exceed 133 percent of the NMGP, except for States eligible for the special rule.

Special rule: Beginning with fiscal year 1998, the 10 States with the lowest Federal medical assistance allotment (in the preceding fiscal year) per person in poverty are to have a growth ceiling of 150 percent. (Poverty count is the 3-year average defined earlier.)

Ensuring that the formula allotments comply with budget targets

The allotment process is designed to guarantee that three fundamental conditions are met:

1. The amounts allotted any two States are proportional to their relative needs-based formula amounts (except for States subject to a floor or ceiling). For example, if State A has a needs-based formula amount 5 percent greater than that of State B, then its allotment will also be 5 percent greater (provided neither State is subject to a floor or ceiling).

2. In any instance where the needs-based formula amount would otherwise fall below a floor or exceed a ceiling, the grant

[4] Note that OldFMAP is used to compute State aggregate needs and thus the State allotment, but NewFMAP is used to compute payments out of that State allotment.

allotment is set to the amount of the applicable growth floor or ceiling.

3. The sum of all the individual State allotment amounts for a given fiscal year must match and not exceed the pool amount available for that fiscal year.

These three conditions are satisfied by computing a unique, constant multiplier (called the "adjustment factor" or "scalar factor") which increases or decreases every needs-based formula allotment in equal proportions as necessary to ensure that the State grants sum to the target amount. The differences among States' allotments remain in proportion to differences in their aggregate needs with the only exceptions being those States whose allotments are determined according to the applicable floors and ceilings.

The adjustment factor is used to compute needs-based formula amounts that sum exactly to the pool amount only when subjected to the rules for floors and ceilings. Needs-based formula amounts without any floors or ceilings do not sum to the target pool amount; that is not the purpose of the adjustment factor. The application of growth ceilings decreases allotments from the needs-based amounts while the growth floors increase allotments over the needs-based formula amount. It is highly unlikely these opposing effects of the ceilings and floors on the allotments will exactly balance. In effect, the adjustment factor balances the aggregate effects of the ceilings and floors by proportionally adjusting all the needs-based formula amounts.

The adjustment factor is determined using a computer model programmed to subject the needs-based formula amounts to the ceilings and floors. The adjustment factor produces a set of needs-based formula amounts such that, after any applicable growth ceiling amounts and floor amounts are substituted for any needs-based formula amounts, the State allotments will then match to the funding amount available. The resulting distribution among States thereby satisfies all three fundamental conditions above.

Computing the adjustment factor for a fiscal year is easily within the capacity of a recent-model microcomputer with standard software. Any one of the three current best-selling spreadsheet software packages has commands built into the software that allow the operator to start a search procedure that will find an adjustment factor. Such a search procedure will test hundreds of adjustment factors and will successively narrow the search until it yields an adjustment factor that will satisfy the above three fundamental conditions to within a one-penny range of accuracy.

The MediGrant plan specifies a simultaneous approach to satisfying these three fundamental conditions. The alternative would be to apply the floors and ceilings to grant allotments in some step-by-step fashion. Such a stepwise application of the floors and ceilings must be specified in great detail because the final outcome is affected by the way in which these steps are carried out. In short, a stepwise approach would be far more complex and the method could be open to challenge.[5] By contrast, the simultaneous ap-

[5] Stepwise approaches may not provide proportional allotments to the maximum extent possible. For example, title III of the Older Americans Act required that allotments be proportional toe the elderly population, except that they be subject to a hold-harmless provision. However, the agency allocated funds in a first step to cover the hold-harmless provision, and then in the next step distributed the remaining funds in proportion to the elder population. This instance is explained in the GAO report "Older Americans Act: Title III Funds Not Distributed According to Statute" [GAO/HEHS–94–37].

proach specified in this bill satisfies the three fundamental conditions above without needing an elaborate set of procedures.

Finally, it is worth noting that existing and past Federal formula grant programs have used this method (or a mathematical equivalent of it). One example is the General Revenue Sharing Program (1972–86) local government allocation formula, which was required to use a three-factor formula to compute amounts which were subjected to a floor and three caps. A computer program subjected the formula amounts to the floor and caps and proportionally increased or decreased the three-factor amounts in a search for allotments that summed to the total amount of available funds.[6]

Election of alternative growth formula.—The bill allows a State to choose to defer a portion of its fiscal year 1996 State allotment in any 1 year and then apply those funds to one or more subsequent fiscal years. This does not in any way reduce or change amounts allotted to any other State.

FMAP computations for payments to the State

Payments to the States under the MediGrant Program would become closed-ended which means that State expenditures would be matched up to the amount of the State's allotment in that year. (However, carryover of allotment is permitted so that any State allotment that is unused in a fiscal year is available for matching in a subsequent year or years.) Federal payments to a State would equal the State's spending multiplied by the new Federal Medical Assistance Percentage [New FMAP] computed for that State.

The new FMAP is the greater of the old FMAP, as computed under current law, or a new FMAP formula amount. The new FMAP formula amount is 100 percent minus the product of .39 multiplied by the ratio of the State's total taxable resources [TTR] share to the State aggregate expenditure needs share. The TTR is a measure of State revenue raising capacity produced by the U.S. Department of the Treasury. It includes per capita personal income as does the old FMAP, but it is a more comprehensive measure of a State's economy. A State's TTR share is equal to the most recent 3-year average of TTR of the State divided by the sum of the 3-year average TTRs of all States.[7] The State aggregate expenditure needs share is the ratio of the State aggregate expenditure needs as defined earlier to the sum of all States' aggregate expenditure needs. NewFMAP can be expressed as:

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[6] Revenue, sharing annually allocated about $4.5 billion to local governments and the law specified the three fundamental conditions above. While no specific procedural steps for accomplishing this were stated in the law, officials in Treasury (following the advice of their lawyers, analysts, and programmers) decided to use a method that is the mathematical equivalent of the use of a scalar factor with floor and ceilings applied simultaneously.

[7] In the case of the District of Columbia, the TTR share is replaced by a personal income share which is the quotient of DC's most recent 3-year average of personal income divided by the sum of the personal income of the states.

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$$NewFMAP = 1.0 - 0.39\ X \left(\frac{(TTR_{State} \ / \ TTR_{US})}{(SAEN_{State} \ / \ SAEN_{US})} \right)$$

The factors in the NewFMAP formula are defined as follows:

TTR_{State}	=	**the average of the three most recent years of Total Taxable Resources of the State;**
TTR_{US}	=	**the sum of TTR_{State} for all States and Washington, D.C.;**
		(Note: In the case of the new FMAP for Washington, D.C., personal income is substituted for TTR in both definitions of terms above.)
$SAEN_{State}$	=	**State aggregate expenditure need which, as defined earlier, is the product of four terms: poverty count, caseload cost index, input cost index, and U.S. average expenditure per person in poverty;**
$SAEN_{US}$	=	**the sum of $SAEN_{State}$ for all States.**

The new FMAP formula amount is also subject to constraints that limit its range, and prevent decreases and limit increases when compared to old FMAP. The new FMAP cannot be less than 40 percent, nor more than 83 percent. The new FMAP also cannot be less than the old FMAP, nor can it exceed an amount calculated as the old FMAP plus 10 percentage points.

[Appendix A]

C–27. SHORT-TERM MEDICAID POLICY

27.1 Preface

The nation's Governors recognize that rapidly escalating health care costs in the face of the increasing need for health care access is the essence of the health care crisis that confronts our nation. The Governors are also aware of the varied and complex factors that must be dealt with if we are to achieve a solution to this crisis.

Currently, thirty-one states are struggling with budget shortfalls. A significant part of the fiscal pressure on states is coming from increased costs in the Medicaid program. In 1980, Medicaid spending accounted for 9 percent of states' budgets: in 1990, it accounted for nearly 14 percent of all state spending.

The increased costs of Medicaid not only represent the generally inflated cost of health care experienced by all purchasers, but are exacerbated by four years of Medicaid mandates.

States must have some immediate relief from the real and pressing problems presented by the Medicaid program if they are to move forward on long-term solutions. Therefore, the Governors call on Congress and the administration to work with us to immediately make the following changes to the Medicaid program.

Congress should delay the mandated implementation of the 1990 Medicaid mandates for two years. This will give federal and state governments time to assess the depth of the recession and the opportunity to develop long-term solutions for the restructuring of the Medicaid program. Accountability based upon results is a better test of state performance than strict compliance with mandated procedures. In return for flexibility, the Governors seek to work with the administration and Congress to develop state-specific mutually acceptable agreements to measure accountability.

States must not be expected to implement any Medicaid program changes until the Health Care Financing Administration (HCFA) has published final regulations to guide program administration. States must be allowed to maintain their complete authority to raise funds to match federal Medicaid dollars without restriction from the federal government.

To promote cost control and efficiency, states should be encouraged to continue innovations in provider payment methods. Though Medicare and most private payers have moved away from cost based reimbursement, federal legislation has mandated that certain Medicaid providers be paid on the basis of costs. In operating our Medicaid programs, states should not be denied cost control options available to the federal government in operating the Medicare program.

In addition, with respect to three particularly troublesome mandates over the last four years, the Governors call upon Congress and the administration to make the following specific, programmatic changes.

27.2 Qualified Medicare Beneficiaries (QMB's)

Congress should assume full financial responsibility for all low-income Medicare beneficiaries who are not otherwise Medicaid-eligible. Since the passage of the Medicare catastrophic legislation in 1988, the federal government has increasingly passed on to the states the responsibility to protect low-income Medicare beneficiaries.

27.3 Nursing Home Reform

States should be considered in compliance with the law if a comparable quality assurance program is in place or developed. In the Omnibus Reconciliation Act of 1987, Congress mandated extensive new quality assurance measures for the Medicaid nursing home program. The statutory language permits limited state flexibility and plus Congress in the position of micro-managing the program.

27.4 Early Periodic Screening, Diagnosis, and Treatment (EPSDT)

In "technical" amendments to the EPSDT program legislated in 1989, Congress added major costs to this program. Therefore, the Governors propose two technical amendments to the 1989 law to: With regard to screening services, clarify that states have the authority to specify qualified screening providers and that states are permitted to insist that such a provider can be required to provide all screening services. Give states the authority to provide only those services identified in a screen that are currently offered in a state's Medicaid program.

While these changes clearly will not resolve the nation's long-term struggle to restructure the Medicaid program, they will provide immediate and sensible relief in dire economic times. These changes also would mark the beginning of a new and real partnership between the federal government and state governments over the design and implementation of the Medicaid program.

[Appendix B]

REPUBLICAN GOVERNORS ASSOCIATION,
NOW AMERICA'S MAJORITY,
October 4, 1995.

Hon. WILLIAM J. CLINTON,
The White House, Washington, DC.

DEAR MR. PRESIDENT: It was with great disappointment that we listened to your September 30 comments regarding the House Medicaid bill. We found your statements concerning how governors and state legislatures would act with regard to spousal impoverishment protections to be alarming. As a former governor, you have called into question our dedication to protecting the most vulnerable of our citizens. Your assumption that states would throw people out of their homes is out of character for Presidential discussions.

Today, all states actively protect against spousal impoverishment. According to the HCFA State Plan Database for calendar year 1994, 36 states have spousal protections that exceed the federal minimum, 22 states are at the federal ceiling, and all others maintain generous exemptions protecting against impoverishment. We find your outrage and distrust of states extremely difficult to understand, given the facts of the matter.

We should also note that you proposed in your FY 1994 budget, a Democrat congress passed, and you signed into law legislation requiring estate recovery programs. Moreover, the Robert Wood Johnson demonstrations permitting states to offer long-term care insurance have been effectively shut down by Democrat congresses. These demonstrations would permit individuals to protect a portion of their assets while at the same time relying on the private sector to provide for payment of long-term care.

We hope that we can work together in a constructive manner to bring crucial reforms to the Medicaid program rather than engage in a war of words.

Sincerely,

MICHAEL O. LEAVITT.
JOHN ENGLER.
JIM EDGAR.
PETE WILSON.
CHRISTINE T. WHITMAN.
TERRY E. BRANSTAD.
ARNE H. CARLSON.
GEORGE E. PATAKI.
TOMMY G. THOMPSON.
EDWARD T. SCHAFER.
GARY E. JOHNSON.
FRANK G. KEATING.
DAVID M. BEASLEY.
GEORGE ALLEN.
JOHN ROWLAND.
KIRK FORDICE.
GEORGE V. VOINOVICH.
FIFE SYMINGTON.
BILL GRAVES.
PHIL BATT.
LINCOLN ALMOND.
JIM GERINGER.

CHANGES IN EXISTING LAW MADE BY THE COMMITTEE RECOMMENDATION

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the Committee recommendation are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE SOCIAL SECURITY ACT

TITLE XI—GENERAL PROVISIONS AND PEER REVIEW

* * * * * * *

EXCLUSION OF CERTAIN INDIVIDUALS AND ENTITIES FROM PARTICIPATION IN MEDICARE AND STATE HEALTH CARE PROGRAMS

SEC. 1128. (a) * * *

* * * * * * *

(h) DEFINITION OF STATE HEALTH CARE PROGRAM.—For purposes of this section and sections 1128A and 1128B, the term "State health care program" means—

(1) a State plan approved under title XIX *or a MediGrant plan under title XXI*,

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TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

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[PROGRAM FOR DISTRIBUTION OF PEDIATRIC VACCINES

[SEC. 1928. (a) ESTABLISHMENT OF PROGRAM.—

⟦(1) IN GENERAL.—In order to meet the requirement of section 1902(a)(62), each State shall establish a pediatric vaccine distribution program (which may be administered by the State department of health), consistent with the requirements of this section, under which—

⟦(A) each vaccine-eligible child (as defined in subsection (b)), in receiving an immunization with a qualified pediatric vaccine (as defined in subsection (h)(8)) from a program-registered provider (as defined in subsection (c)) on or after October 1, 1994, is entitled to receive the immunization without charge for the cost of such vaccine; and

⟦(B)(i) each program-registered provider who administers such a pediatric vaccine to a vaccine-eligible child on or after such date is entitled to receive such vaccine under the program without charge either for the vaccine or its delivery to the provider, and (ii) no vaccine is distributed under the program to a provider unless the provider is a program-registered provider.

⟦(2) DELIVERY OF SUFFICIENT QUANTITIES OF PEDIATRIC VACCINES TO IMMUNIZE FEDERALLY VACCINE-ELIGIBLE CHILDREN.—

⟦(A) IN GENERAL.—The Secretary shall provide under subsection (d) for the purchase and delivery on behalf of each State meeting the requirement of section 1902(a)(62) (or, with respect to vaccines administered by an Indian tribe or tribal organization to Indian children, directly to the tribe or organization), without charge to the State, of such quantities of qualified pediatric vaccines as may be necessary for the administration of such vaccines to all federally vaccine-eligible children in the State on or after October 1, 1994. This paragraph constitutes budget authority in advance of appropriations Acts, and represents the obligation of the Federal Government to provide for the purchase and delivery to States of the vaccines (or payment under subparagraph (C)) in accordance with this paragraph.

⟦(B) SPECIAL RULES WHERE VACCINE IS UNAVAILABLE.—To the extent that a sufficient quantity of a vaccine is not available for purchase or delivery under subsection (d), the Secretary shall provide for the purchase and delivery of the available vaccine in accordance with priorities established by the Secretary, with priority given to federally vaccine-eligible children unless the Secretary finds there are other public health considerations.

⟦(C) SPECIAL RULES WHERE STATE IS A MANUFACTURER.—

⟦(i) PAYMENTS IN LIEU OF VACCINES.—In the case of a State that manufactures a pediatric vaccine the Secretary, instead of providing the vaccine on behalf of a State under subparagraph (A), shall provide to the State an amount equal to the value of the quantity of such vaccine that otherwise would have been delivered on behalf of the State under such subparagraph but only if the State agrees that such payments will only be used for purposes relating to pediatric immunizations.

⟦(ii) DETERMINATION OF VALUE.—In determining the amount to pay a State under clause (i) with respect to a pediatric vaccine, the value of the quantity of vaccine shall be determined on the basis of the price in effect for the qualified pediatric vaccine under contracts under subsection (d). If more than 1 such contract is in effect, the Secretary shall determine such value on the basis of the average of the prices under the contracts, after weighting each such price in realtion to the quantity of vaccine under the contract involved.

⟦(b) VACCINE-ELIGIBLE CHILDREN.—For purposes of this section:

⟦(1) IN GENERAL.—The term "vaccine-eligible child" means a child who is a federally vaccine-eligible child (as defined in paragraph (2)) or a State vaccine-eligible child (as defined in paragraph (3)).

⟦(2) FEDERALLY VACCINE-ELIGIBLE CHILD.—

⟦(A) IN GENERAL.—The term "federally vaccine-eligible child" means any of the following children:

⟦(i) A medicaid-eligible child.

⟦(ii) A child who is not insured.

⟦(iii) A child who (I) is administered a qualified pediatric vaccine by a federally-qualified health center (as defined in section 1905(l)(2)(B)) or a rural health clinic (as defined in section 1905(l)(1)), and (II) is not insured with respect to the vaccine.

⟦(iv) A child who is an Indian (as defined in subsection (h)(3)).

⟦(B) DEFINITIONS.—In subparagraph (A):

⟦(i) The term "medicaid-eligible" means, with respect to a child, a child who is entitled to medical assistance under a state plan approved under this title.

⟦(ii) The term "insured" means, with respect to a child—

⟦(I) for purposes of subparagraph (A)(ii), that the child is enrolled under, and entitled to benefits under, a health insurance policy or plan, including a group health plan, a prepaid health plan, or an employee welfare benefit plan under the Employee Retirement Income Security Act of 1974; and

⟦(II) for purposes of subparagraph (A)(iii)(II) with respect to a pediatric vaccine, that the child is entitled to benefits under such a health insurance policy or plan, but such benefits are not available with respect to the cost of the pediatric vaccine.

⟦(3) STATE VACCINE-ELIGIBLE CHILD.—The term "State vaccine-eligible child" means, with respect to a State and a qualified pediatric vaccine, a child who is within a class of children for which the State is purchasing the vaccine pursuant to subsection (d)(4)(B).

⟦(c) PROGRAM-REGISTERED PROVIDERS.—

⟦(1) DEFINED.—In this section, except as otherwise provided, the term "program-registered provider" means, with respect to a State, any health care provider that—

⟦(A) is licensed or otherwise authorized for administration of pediatric vaccines under the law of the State in which the administration occurs (subject to section 333(e) of the Public Health Service Act), without regard to whether or not the provider participates in the plan under this title;

⟦(B) submits to the State an executed provider agreement described in paragraph (2); and

⟦(C) has not been found, by the Secretary or the State, to have violated such agreement or other applicable requirements established by the Secretary or the State consistent with this section.

⟦(2) PROVIDER AGREEMENT.—A provider agreement for a provider under this paragraph is an agreement (in such form and manner as the Secretary may require) that the provider agrees as follows:

⟦(A)(i) Before administering a qualified pediatric vaccine to a child, the provider will ask a parent of the child such questions as are necessary to determine whether the child is a vaccine-eligible child, but the provider need not independently verify the answers to such questions.

⟦(ii) The provider will, for a period of time specified by the Secretary, maintain records of responses made to the questions.

⟦(iii) The provider will, upon request, make such records available to the State and to the Secretary, subject to section 1902(a)(7).

⟦(B)(i) Subject to clause (ii), the provider will comply with the schedule, regarding the appropriate periodicity, dosage, and contraindications applicable to pediatric vaccines, that is established and periodically reviewed and, as appropriate, revised by the advisory committee referred to in subsection (e), except in such cases as, in the provider's medical judgment subject to accepted medical practice, such compliance is medically inappropriate.

⟦(ii) The provider will provide pediatric vaccines in compliance with applicable State law, including any such law relating to any religious or other exemption.

⟦(C)(i) In administering a qualified pediatric vaccine to a vaccine-eligible child, the provider will not impose a charge for the cost of the vaccine. A program-registered provider is not required under this section to administer such a vaccine to each child for whom an immunization with the vaccine is sought from the provider.

⟦(ii) The provider may impose a fee for the administration of a qualified pediatric vaccine so long as the fee in the case of a federally vaccine-eligible child does not exceed the costs of such administration (as determined by the Secretary based on actual regional costs for such administration).

⟦(iii) The provider will not deny administration of a qualified pediatric vaccine to a vaccine-eligible child due to the inability of the child's parent to pay an administration fee.

⟦(3) ENCOURAGING INVOLVEMENT OF PROVIDERS.—Each program under this section shall provide, in accordance with criteria established by the Secretary—

⟦(A) for encouraging the following to become program-registered providers: private health care providers, the Indian Health Service, health care providers that receive funds under title V of the Indian Health Care Improvement Act, and health programs or facilities operated by Indian tribes or tribal organizations; and

⟦(B) for identifying, with respect to any population of vaccine-eligible children a substantial portion of whose parents have a limited ability to speak the English language, those program-registered providers who are able to communicate with the population involved in the language and cultural context that is most appropriate.

⟦(4) STATE REQUIREMENTS.—Except as the Secretary may permit in order to prevent fraud and abuse and for related purposes, a State may not impose additional qualifications or conditions, in addition to the requirements of paragraph (1), in order that a provider qualify as a program-registered provider under this section. This subsection does not limit the exercise of State authority under section 1915(b).

⟦(d) NEGOTIATION OF CONTRACTS WITH MANUFACTURERS.—

⟦(1) IN GENERAL.—For the purpose of meeting obligations under this section, the Secretary shall negotiate and enter into contracts with manufacturers of pediatric vaccines consistent with the requirements of this subsection and, to the maximum extent practicable, consolidate such contracting with any other contracting activities conducted by the Secretary to purchase vaccines. The Secretary may enter into such contracts under which the Federal Government is obligated to make outlays, the budget authority for which is not provided for in advance in appropriations Acts, for the purchase and delivery of pediatric vaccines under subsection (a)(2)(A).

⟦(2) AUTHORITY TO DECLINE CONTRACTS.—The Secretary may decline to enter into such contracts and may modify or extend such contracts.

⟦(3) CONTRACT PRICE.—

⟦(A) IN GENERAL.—The Secretary, in negotiating the prices at which pediatric vaccines will be purchased and delivered from a manufacturer under this subsection, shall take into account quantities of vaccines to be purchased by States under the option under paragraph (4)(B).

⟦(B) NEGOTIATION OF DISCOUNTED PRICE FOR CURRENT VACCINES.—With respect to contracts entered into under this subsection for a pediatric vaccine for which the Centers for Disease Control and Prevention has a contract in effect under section 317(j)(1) of the Public Health Service Act as of May 1, 1993, no price for the purchase of such vaccine for vaccine-eligible children shall be agreed to by the Secretary under this subsection if the price per dose of such vaccine (including delivery costs and any applicable excise tax established under section 4131 of the Internal Revenue Code of 1986) exceeds the price per dose for the vaccine in effect under such a contract as of such date increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) from May 1993 to the month before the month in which such contract is entered into.

⟦(C) NEGOTIATION OF DISCOUNTED PRICE FOR NEW VACCINES.—With respect to contracts entered into for a pediatric vaccine not described in subparagraph (B), the price for the purchase of such vaccine shall be a discounted price negotiated by the Secretary that may be established without regard to such subparagraph.

⟦(4) QUANTITIES AND TERMS OF DELIVERY.—Under such contracts—

⟦(A) the Secretary shall provide, consistent with paragraph (6), for the purchase and delivery on behalf of States (and tribes and tribal organizations) of quantities of pediatric vaccines for federally vaccine-eligible children; and

⟦(B) each State, at the option of the State, shall be permitted to obtain additional quantities of pediatric vaccines (subject to amounts specified to the Secretary by the State in advance of negotiations) through purchasing the vaccines from the manufacturers at the applicable price negotiated by the Secretary consistent with paragraph (3), if (i) the State agrees that the vaccines will be used to provide immunizations only for children who are not federally vaccine-eligible children and (ii) the State provides to the Secretary such information (at a time and manner specified by the Secretary, including in advance of negotiations under paragraph (1)) as the Secretary determines to be necessary, to provide for quantities of pediatric vaccines for the State to purchase pursuant to this subsection and to determine annually the percentage of the vaccine market that is purchased pursuant to this section and this subparagraph.

The Secretary shall enter into the initial negotiations under the preceding sentence not later than 180 days after the date of the enactment of the Omnibus Budget Reconciliation Act of 1993.

⟦(5) CHARGES FOR SHIPPING AND HANDLING.—The Secretary may enter into a contract referred to in paragraph (1) only if the manufacturer involved agrees to submit to the Secretary such reports as the Secretary determines to be appropriate to assure compliance with the contract and if, with respect to a State program under this section that does not provide for the direct delivery of qualified pediatric vaccines, the manufacturer involved agrees that the manufacturer will provide for the delivery of the vaccines on behalf of the State in accordance with such program and will not impose any charges for the costs of such delivery (except to the extent such costs are provided for in the price established under paragraph (3)).

⟦(6) ASSURING ADEQUATE SUPPLY OF VACCINES.—The Secretary, in negotiations under paragraph (1), shall negotiate for quantities of pediatric vaccines such that an adequate supply of such vaccines will be maintained to meet unanticipated needs for the vaccines. For purposes of the preceding sentence, the Secretary shall negotiate for a 6-month supply of vaccines in addition to the quantity that the Secretary otherwise would provide for in such negotiations. In carrying out this paragraph, the Secretary shall consider the potential for outbreaks of the diseases with respect to which the vaccines have been developed.

⟦(7) MULTIPLE SUPPLIERS.—In the case of the pediatric vaccine involved, the Secretary shall, as appropriate, enter into a contract referred to in paragraph (1) with each manufacturer of the vaccine that meets the terms and conditions of the Secretary for an award of such a contract (including terms and conditions regarding safety and quality). With respect to multiple contracts entered into pursuant to this paragraph, the Secretary may have in effect different prices under each of such contracts and, with respect to a purchase by States pursuant to paragraph (4)(B), the Secretary shall determine which of such contracts will be applicable to the purchase.

⟦(e) USE OF PEDIATRIC VACCINES LIST.—The Secretary shall use, for the purpose of the purchase, delivery, and administration of pediatric vaccines under this section, the list established (and periodically reviewed and as appropriate revised) by the Advisory Committee on Immunization Practices (an advisory committee established by the Secretary, acting through the Director of the Centers for Disease Control and Prevention).

⟦(f) REQUIREMENT OF STATE MAINTENANCE OF IMMUNIZATION LAWS.—In the case of a State that had in effect as of May 1, 1993, a law that requires some or all health insurance policies or plans to provide some coverage with respect to a pediatric vaccine, a State program under this section does not comply with the requirements of this section unless the State certifies to the Secretary that the State has not modified or repealed such law in a manner that reduces the amount of coverage so required.

⟦(g) TERMINATION.—This section, and the requirement of section 1902(a)(62), shall cease to be in effect beginning on such date as may be prescribed in Federal law providing for immunization services for all children as part of a broad-based reform of the national health care system.

⟦(h) DEFINITIONS.—For purposes of this section:

⟦(1) The term "child" means an individual 18 years of age or younger.

⟦(2) The term "immunization" means an immunization against a vaccine-preventable disease.

⟦(3) The terms "Indian", "Indian tribe" and "tribal organization" have the meanings given such terms in section 4 of the Indian Health Care Improvement Act.

⟦(4) The term "manufacturer" means any corporation, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities), which manufactures, imports, processes, or distributes under its label any pediatric vaccine. The term "manufacture" means to manufacture, import, process, or distribute a vaccine.

[(5) The term "parent" includes, with respect to a child, an individual who qualifies as a legal guardian under State law.

[(6) The term "pediatric vaccine" means a vaccine included on the list under subsection (e).

[(7) The term "program-registered provider" has the meaning given such term in subsection (c).

[(8) The term "qualified pediatric vaccine" means a pediatric vaccine with respect to which a contract is in effect under subsection (d).

[(9) The terms "vaccine-eligible child", "federally vaccine-eligible child", and "State vaccine-eligible child" have the meaning given such terms in subsection (b).]

TERMINATION OF MEDICAID PROGRAM; LIMITATION ON NEW OBLIGATION AUTHORITY

SEC. 1931. (a) ELIMINATION OF INDIVIDUAL ENTITLEMENT.—Effective on the date of the enactment of this section—

(1) except as provided in subsection (b), the Federal Government has no obligation to provide payment with respect to items and services provided under this title, and

(2) this title shall not be construed as providing for an entitlement, under Federal law in relation to the Federal Government, in an individual or person (including any provider) at the time of provision or receipt of services.

(b) LIMITATION ON OBLIGATION AUTHORITY.—Notwithstanding any other provision of this title—

(1) POST-ENACTMENT, PRE-MEDIGRANT.—Subject to paragraph (2), the Secretary is authorized to enter into obligations with any State under this title for expenses incurred after the date of the enactment of this Act and during fiscal year 1996, but not in excess of the obligation allotment for that State for fiscal year 1996 under section 2121(b)(4).

(2) NONE AFTER MEDIGRANT.—The Secretary is not authorized to enter into any obligation with any State under this title for expenses incurred on or after the earlier of—

(A) October 1, 1996; or

(B) the first day of the first quarter on which the State plan under title XXI is first effective.

(3) AGREEMENT.—A State's submission of claims for payment under section 1903 after the date of the enactment of this title with respect to which the limitation described in paragraph (1) applies is deemed to constitute the State's acceptance of the obligation limitation under such paragraph (including the formula for computing the amount of such obligation limitation).

(c) REQUIREMENT FOR TIMELY SUBMITTAL OF CLAIMS.—No payment shall be made to a State under this title with respect to an obligation incurred before the date of the enactment of this section, unless the State has submitted to the Secretary, by not later than June 30, 1996, a claim for Federal financial participation for expenses paid by the State with respect to such obligations. Nothing in subsection (a) or (b) shall be construed as affecting the obligation

of the Federal Government to pay claims described in the previous sentence.

REFERENCES TO LAWS DIRECTLY AFFECTING MEDICAID PROGRAM

SEC. [1931]. *1932*. (a) * * *

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TITLE XXI—MEDIGRANT PROGRAM FOR LOW-INCOME INDIVIDUALS AND FAMILIES

TABLE OF CONTENTS OF TITLE

SEC. 2100. PURPOSE; STATE MEDIGRANT PLANS.

(a) PURPOSE.—The purpose of this title is to provide block grants to States to enable them to provide medical assistance to low-income

individuals and families in a more effective, efficient, and responsive manner.

(b) STATE PLAN REQUIRED.—A State is not eligible for payment under section 2122 of this title unless the State has submitted to the Secretary under part E a plan (in this title referred to as a "MediGrant plan") that—

(1) sets forth how the State intends to use the funds provided under this title to provide medical assistance to needy individuals and families consistent with the provisions of this title, and

(2) is approved under such part.

(c) CONTINUED APPROVAL.—An approved MediGrant plan shall continue in effect unless and until—

(1) the State amends the plan under section 2152,

(2) the State terminates participation under this title under section 2153, or

(3) the Secretary finds substantial noncompliance of the plan with the requirements of this title under section 2154.

(d) STATE ENTITLEMENT.—This title constitutes budget authority in advance of appropriations Acts, and represents the obligation of the Federal Government to provide for the payment to States of amounts provided under part C.

PART A—OBJECTIVES, GOALS, AND PERFORMANCE UNDER STATE PLANS

SEC. 2101. DESCRIPTION OF STRATEGIC OBJECTIVES AND PERFORMANCE GOALS.

(a) DESCRIPTION.—A MediGrant plan shall include a description of the strategic objectives and performance goals the State has established for providing health care services to low-income populations under this title, including a general description of the manner in which the plan is designed to meet these objectives and goals.

(b) CERTAIN OBJECTIVES AND GOALS REQUIRED.—A MediGrant plan shall include strategic objectives and performance goals relating to rates of childhood immunizations and reductions in infant mortality and morbidity.

(c) CONSIDERATIONS.—In specifying these objectives and goals the State may consider factors such as the following:

(1) The State's priorities with respect to such areas as providing assistance to low-income populations.

(2) The State's priorities with respect to the general public health and the health status of individuals eligible for assistance under the MediGrant plan.

(3) The State's financial resources, the particular economic conditions in the State, and relative adequacy of the health care infrastructure in different regions of the State.

(d) PERFORMANCE MEASURES.—To the extent practicable—

(1) one or more performance goals shall be established by the State for each strategic objective identified in the MediGrant plan; and

(2) the MediGrant plan shall describe, how program performance will be—

(A) measured through objective, independently verifiable means, and

(B) compared against performance goals, in order to determine the State's performance under this title.

(e) PERIOD COVERED.—

(1) STRATEGIC OBJECTIVES.—The strategic objectives shall cover a period of not less than 5 years and shall be updated and revised at least every 3 years.

(2) PERFORMANCE GOALS.—The performance goals shall be established for dates that are not more than 3 years apart.

SEC. 2102. ANNUAL REPORTS.

(a) IN GENERAL.—In the case of a State with a MediGrant plan that is in effect for part or all of a fiscal year, no later than March 31 following such fiscal year (or March 31, 1998, in the case of fiscal year 1996) the State shall prepare and submit to the Secretary and the Congress a report on program activities and performance under this title for such fiscal year.

(b) CONTENTS.—Each annual report under this section for a fiscal year shall include the following:

(1) EXPENDITURE AND BENEFICIARY SUMMARY.—

(A) INITIAL SUMMARY.—For the report for fiscal year 1997 (and, if applicable, fiscal year 1996), a summary of all expenditures under the MediGrant plan during the fiscal year (and during any portions of fiscal year 1996 during which the MediGrant plan was in effect under this title) as follows:

(i) Aggregate medical assistance expenditures, disaggregated to the extent required to determine compliance with the set-aside requirements of subsections (a) through (c) section 2112 and to compute the case mix index under section 2121(d)(3).

(ii) For each general category of eligible individuals (specified in subsection (c)(1), aggregate medical assistance expenditures and the total and average number of eligible individuals under the MediGrant plan.

(iii) By each general category of eligible individuals, total expenditures for each of the categories of health care items and services (specified in subsection (c)(2)) which are covered under the MediGrant plan and provided on a fee-for-service basis.

(iv) By each general category of eligible individuals, total expenditures for payments to capitated health care organizations (as defined in section 2114(c)(1)).

(v) Total administrative expenditures.

(B) SUBSEQUENT SUMMARIES.—For reports for each succeeding fiscal year, a summary of—

(i) all expenditures under the MediGrant plan consistent with the reporting format specified by the MediGrant Task Force under section 2106(d)(1), and

(ii) the total and average number of eligible individuals under the MediGrant plan for each general category of eligible individuals..

(2) UTILIZATION SUMMARY.—

(A) INITIAL SUMMARY.—For the report for fiscal year 1997 (and, if applicable, fiscal year 1996), summary statistics on the utilization of health care services under the MediGrant

plan during the year (and during any portions of fiscal year 1996 during which the MediGrant plan was in effect under this title) as follows:

(i) For each general category of eligible individuals and for each of the categories of health care items and services which are covered under the MediGrant plan and provided on a fee-for-service basis, the number and percentage of persons who received such a type of service or item during the period covered by the report.

(ii) Summary of health care utilization data reported to the State by capitated health care organizations.

(B) SUBSEQUENT SUMMARIES.—For reports for each succeeding fiscal year, summary statistics on the utilization of health care services under the MediGrant plan consistent with the reporting format specified by the MediGrant Task Force under section 2106(d)(1).

(3) ACHIEVEMENT OF PERFORMANCE GOALS.—With respect to each performance goal established under section 2101 and applicable to the year involved—

(A) a brief description of the goal;

(B) data on the actual performance with respect to the goal;

(C) a review of the extent to which the goal was achieved, based on such data; and

(D) where a performance goal has not been met—

(i) why the goal was not met, and

(ii) actions to be taken in response to such performance (including adjustments in performance goals or program activities for subsequent years).

(4) PROGRAM EVALUATIONS.—A summary of the findings of evaluations under section 2103 completed during the fiscal year covered by the report.

(5) FRAUD AND ABUSE AND QUALITY CONTROL ACTIVITIES.—A general description of the State's activities under part D to detect and deter fraud and abuse and to assure quality of services provided under the program.

(6) PLAN ADMINISTRATION.—

(A) A description of the administrative roles and responsibilities of entities in the State responsible for administration of this title.

(B) Organizational charts for each entity in the State primarily responsible for activities under this title.

(C) A brief description of each interstate compact (if any) the State has entered into with other States with respect to activities under this title.

(D) General citations to the State statutes and administrative rules governing the State's activities under this title.

(7) INPATIENT HOSPITAL PAYMENTS.—With respect to inpatient hospital services provided under the MediGrant plan on a fee-for-service basis, a description of the average amount paid per discharge in the fiscal year compared either to the average charge for such services or to the State's estimate of the average amount paid per discharge by commercial health insurers in the State.

(c) DEFINITIONS.—In this section:

(1) Each of the following is a general category of eligible individuals:

(A) Children.

(B) Blind or disabled adults under 65 years of age.

(C) Persons 65 years of age or older.

(D) Other adults.

(2) The health care items and services described in each subparagraph of section 2171(a)(1) shall be considered a separate category of health care items and services.

SEC. 2103. PERIODIC, INDEPENDENT EVALUATIONS.

(a) IN GENERAL.—During fiscal year 1998 and every third fiscal year thereafter, each State shall provide for an evaluation of the operation of its MediGrant plan under this title.

(b) INDEPENDENT.—Each such evaluation with respect to an activity under the MediGrant plan shall be conducted by an entity that is neither responsible under State law for the submission of the State plan (or part thereof) nor responsible for administering (or supervising the administration of) the activity. If consistent with the previous sentence, such an entity may be a college or university, a State agency, a legislative branch agency in a State, or an independent contractor.

(c) RESEARCH DESIGN.—Each such evaluation shall be conducted in accordance with a research design that is based on generally accepted models of survey design and sampling and statistical analysis.

SEC. 2104. DESCRIPTION OF PROCESS FOR MEDIGRANT PLAN DEVELOPMENT.

Each MediGrant plan shall include a description of the process under which the plan shall be developed and implemented in the State (consistent with section 2105).

SEC. 2105. CONSULTATION IN MEDIGRANT PLAN DEVELOPMENT.

(a) PUBLIC NOTICE PROCESS.—

(1) IN GENERAL.—Before submitting a MediGrant plan or a plan amendment described in paragraph (3) to the Secretary under part E, a State shall provide—

(A) public notice respecting the submittal of the proposed plan or amendment, including a general description of the plan or amendment;

(B) a means for the public to inspect or obtain a copy (at reasonable charge) of the proposed plan or amendment; and

(C) an opportunity for submittal and consideration of public comments on the proposed plan or amendment.

The previous sentence shall not apply to a revision of a MediGrant plan (or revision of an amendment to a plan) made by a State under section 2154(c)(1) or to a plan amendment withdrawal described in section 2152(c)(4).

(2) CONTENTS OF NOTICE.—A notice under paragraph (1)(A) for a proposed plan or amendment shall include a description of—

(A) the general purpose of the proposed plan or amendment (including applicable effective dates),

(B) where the public may inspect the proposed plan or amendment,

(C) how the public may obtain a copy of the proposed plan or amendment and the applicable charge (if any) for the copy, and

(D) how the public may submit comments on the proposed plan or amendment, including any deadlines applicable to consideration of such comments.

(3) AMENDMENTS DESCRIBED.—An amendment to a MediGrant plan described in this paragraph is an amendment which makes a material and substantial change in eligibility under the MediGrant plan or the benefits provided under the plan.

(4) PUBLICATION.—Notices under this subsection may be published (as selected by the State) in one or more daily newspapers of general circulation in the State or in any publication used by the State to publish State statutes or rules.

(5) COMPARABLE PROCESS.—A separate notice, or notices, shall not be required under this subsection for a State if notice of the MediGrant plan or an amendment to the plan will be provided under a process specified in State law that is substantially equivalent to the notice process specified in this subsection.

(b) ADVISORY COMMITTEE.—

(1) IN GENERAL.—Each State with a MediGrant plan shall establish and maintain an advisory committee.

(2) CONSULTATION.—The State shall periodically consult with the advisory committee in the development, revision, and monitoring the performance of the MediGrant plan, including—

(A) the development of strategic objectives and performance goals under section 2101,

(B) the annual report under section 2102, and

(C) the research design under section 2103(c).

(3) GEOGRAPHIC DIVERSITY.—The composition of the advisory committee shall be chosen in a manner that assures some representation on the advisory committee of the different general geographic regions of the State. Nothing in the previous sentence shall be construed as requiring proportional representation of geographic areas in a State.

(4) CONSTRUCTION.—Nothing in this title shall be construed as preventing a State from establishing more than one advisory committee, including specialized advisory committees that represent the interests of specific population groups, provider groups, or geographic areas.

SEC. 2106. MEDIGRANT TASK FORCE.

(a) IN GENERAL.—The Secretary shall provide for the establishment of a MediGrant Task Force (in this section referred to as the "Task Force").

(b) COMPOSITION.—The Task Force shall consist of 6 members appointed by the chair of the National Governors Association and 6 members appointed by the vice chair of the National Governors Association.

(c) ADVISORY GROUP FOR TASK FORCE.—The Secretary shall provide for the establishment of an advisory group to assist the Task

Force in carrying out its duties under this section, consisting of one representative appointed by each of the following associations:

(1) National Committee for Quality Assurance.

(2) Joint Commission for the Accreditation of Healthcare Organizations.

(3) Group Health Association of America.

(4) American Managed Care and Review Association.

(5) Association of State and Territorial Health Officers.

(6) American Medical Association.

(7) American Hospital Association.

(8) American Dental Association.

(9) American College of Gerontology.

(10) American Health Care Association.

(11) An association identified by the Secretary as representing the interests of disabled individuals.

(12) An association identified by the Secretary as representing the interests of children.

(13) An association identified by the Secretary as representing the interests of the elderly.

(14) An association identified by the Secretary as representing the interests of mentally ill individuals.

Any reference in this subsection to a particular group shall be deemed a reference to any successor to such group.

(d) DUTIES.—

(1) FORMAT FOR EXPENDITURE AND UTILIZATION SUMMARIES.—The Task Force shall specify, by not later than December 31, 1996, the format of expenditure summaries and utilization summaries required under section 2102. Such format may provide for the reporting of different information from that required under section 2102(a), but shall include the reporting of at least the information described in section 2102(b)(1)(A)(i).

(2) MODELS AND SUGGESTIONS.—The Task Force shall study and report to Congress and the States, by not later than April 1, 1997, recommendations on the following:

(A) Recommended models for strategic objectives and performance goals for consideration by States in the development of such objectives and goals under section 2102, including alternative models for each of the objectives and goals described in section 2101(b).

(B) For each suggested model for a strategic objective or performance goal suggested methodologies for States to consider in measuring and verifying the objective or goal.

(C) An assessment of the potential usefulness to States of quality assurance safeguards, utilization data sets, and accreditation programs that are used or under development in the private sector.

(D) Recommended designs and evaluation methodologies for consideration by States in providing for independent evaluations under section 2103.

(3) CONSTRUCTION.—Nothing in this subsection shall be construed as requiring a State to adopt any of the strategic objectives or performance goals suggested under paragraph (2).

(e) ADMINISTRATIVE ASSISTANCE.—Administrative support for the Task Force shall be provided by the Agency for Health Care Policy and Research (or, in the absence of such Agency, the Secretary).

PART B—ELIGIBILITY, BENEFITS, AND SET-ASIDES

SEC. 2111. GENERAL DESCRIPTION OF ELIGIBILITY AND BENEFITS.

(a) IN GENERAL.—Each MediGrant plan shall include a description (consistent with this title) of the following:

(1) ELIGIBLE POPULATION.—The population eligible for medical assistance under the plan, including—

(A) any limitations on categories of such individuals;

(B) any limitations as to the duration of eligibility;

(C) any eligibility standards relating to age, income (including any standards relating to spenddowns), residency, resources, disability status, immigration status, or employment status of individuals;

(D) methods of establishing (and continuing) eligibility and enrollment (including the methodology for computing family income);

(E) the eligibility standards in the plan that protect the income and resources of a married individual who is living in the community and whose spouse is residing in an institution in order to prevent the impoverishment of the community spouse; and

(F) any other standards relating to eligibility for medical assistance under the plan.

(2) SCOPE OF ASSISTANCE.—The amount, duration, and scope of health care services and items covered under the plan, including differences among different eligible population groups.

(3) DELIVERY METHOD.—The State's approach to delivery of medical assistance, including a general description of—

(A) the use (or intended use) of vouchers, fee-for-service, or managed care arrangements (such as capitated health care plans, case management, and case coordination), and

(B) utilization control systems.

(4) FEE-FOR-SERVICE BENEFITS.—To the extent that medical assistance is furnished on a fee-for-service basis—

(A) how the State determines the qualifications of health care providers eligible to provide such assistance, and

(B) how the State determines rates of reimbursement for providing such assistance.

(5) COST-SHARING.—Beneficiary cost-sharing (if any), including variations in such cost-sharing by population group or type of service and financial responsibilities of parents of recipients under 21 years of age and the spouses of recipients.

(6) UTILIZATION INCENTIVES.—Incentives or requirements (if any) to encourage the appropriate utilization of services.

(7) TREATMENT OF HEALTH CENTERS.—

(A) IN GENERAL.—In the case of a State in which one or more health centers is located, the MediGrant plan shall include a description of—

(i) what provision (if any) has been made for payment for items and services furnished by health centers, and

(ii) the manner in which medical assistance for low-income eligible individuals who received health care services at health centers on or before the date of the enactment of this title may be provided, as determined by the State in consultation with the health centers in the State.

(B) HEALTH CENTER DEFINED.—For purposes of subparagraph (A), the term "health center" means an entity that—

(i) is receiving a grant under section 329, 330, 340, or 340A of the Public Health Service Act; or

(ii) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, was determined by the Secretary to meet the requirements to receive such a grant.

(8) SUPPORT FOR CERTAIN HOSPITALS.—

(A) IN GENERAL.—With respect to hospitals described in subparagraph (B) located in the State, the MediGrant plan shall include a description—

(i) of the extent to which provisions have been made for expenditures for items and services furnished by such hospitals and covered under the plan, and

(ii) for individuals who (I) are enrolled for benefits for covered services under the MediGrant plan and (II) were previously receiving benefits for such services under the medicaid program by or through such hospitals, where or how they will receive benefits for such services under the MediGrant plan if the MediGrant plan does not permit such individuals to obtain benefits for those services by or through such hospitals.

(B) HOSPITALS DESCRIBED.—For purposes of subparagraph (A), a hospital described in this subparagraph is a subsection (d) hospital (as defined in section 1886(d)(1)(B)) that is described in clauses (i) and (ii) of section 340B(a)(4)(L) of the Public Health Service Act.

(b) IMMUNIZATIONS FOR CHILDREN.—The MediGrant plan shall provide medical assistance for immunizations for children eligible for any medical assistance under the MediGrant plan, in accordance with a schedule for immunizations established by the Health Department of the State in consultation with the individuals and entities in the State responsible for the administration of the plan.

(c) EQUAL PAYMENT RATES FOR RURAL PROVIDERS.—A State with a MediGrant plan shall establish payment rates for all services of rural providers that are comparable to the payment rates established for like services of such type of providers not in rural areas; except that a State may provide for incentive payments to attract and retain providers to medically underserved areas.

(d) PREEXISTING CONDITION EXCLUSIONS.—Notwithstanding any other provision of this title—

(1) a MediGrant plan may not deny or exclude coverage of any item or service for an eligible individual for benefits under the MediGrant plan for such item or service on the basis of a preexisting condition; and

(2) if a State contracts or makes other arrangements (through the eligible individual or through another entity) with a

capitated health care organization, insurer, or other entity, for the provision of items or services to eligible individuals under the MediGrant plan and the State permits such organization, insurer, or other entity to exclude coverage of a covered item or service on the basis of a preexisting condition, the State shall provide, through its MediGrant plan, for such coverage (through direct payment or otherwise) for any such covered item or service denied or excluded on the basis of a preexisting condition.

SEC. 2112. SET-ASIDES OF FUNDS FOR POPULATION GROUPS.

(a) FOR TARGETED LOW-INCOME FAMILIES.—

(1) IN GENERAL.—Subject to subsection (e), a MediGrant plan shall provide that the amount of funds expended under the plan for medical assistance for targeted low-income families (as defined in paragraph (3)) for a fiscal year shall be not less than the minimum low-income-family percentage specified in paragraph (2) of the total funds expended under the plan for all medical assistance for the fiscal year.

(2) MINIMUM LOW-INCOME-FAMILY PERCENTAGE.—The minimum low-income-family percentage specified in this paragraph for a State is equal to 85 percent of the average percentage of the expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994 which were attributable to expenditures for medical assistance for mandated benefits (as defined in subsection (h)) furnished to individuals—

(A) who (at the time of furnishing the assistance) were under 65 years of age,

(B) whose coverage (at such time) under a State plan under title XIX was required under Federal law, and

(C) whose eligibility for such coverage (at such time) was not on a basis directly related to disability status (including being blind).

(3) TARGETED LOW-INCOME FAMILY DEFINED.—In this subsection, the term "targeted low-income family" means a family (which may be an individual)—

(A) which includes a child or a pregnant woman, and

(B) the income of which does not exceed 185 percent of the poverty line applicable to a family of the size involved.

(b) FOR LOW-INCOME ELDERLY.—

(1) SET-ASIDES.—Subject to subsection (e)—

(A) GENERAL SET-ASIDE.—A MediGrant plan shall provide that the amount of funds expended under the plan for medical assistance for eligible low-income individuals 65 years of age or older for a fiscal year shall be not less than the minimum low-income-elderly percentage specified in paragraph (2)(A) of the total funds expended under the plan for all medical assistance for the fiscal year.

(B) SET-ASIDE FOR MEDICARE PREMIUM ASSISTANCE.—A MediGrant plan shall provide that the amount of funds expended under the plan for medical assistance for medicare cost-sharing described in section 2171(c)(1) for a fiscal year shall be not less than the minimum medicare premium assistance percentage specified in paragraph (2)(B) of the

total funds expended under the plan for all medical assistance for the fiscal year.

(2) MINIMUM PERCENTAGES.—

(A) FOR GENERAL SET-ASIDE.—The minimum low-income-elderly percentage specified in this subparagraph for a State is equal to 85 percent of the average percentage of the expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994 which was attributable to expenditures for medical assistance for mandated benefits furnished to individuals—

(i) whose eligibility for such assistance was based on their being 65 years of age or older; and

(ii)(I) whose coverage (at such time) under a State plan under title XIX was required under Federal law, or (II) who (at such time) were residents of a nursing facility.

(B) FOR SET-ASIDE FOR MEDICARE PREMIUM ASSISTANCE.—The minimum medicare premium assistance percentage specified in this subparagraph for a State is equal to 85 percent of the average percentage of the expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994 which was attributable to expenditures for medical assistance for medicare premiums described in section 1905(p)(3)(A) for individuals whose coverage (at such time) for such assistance for such premiums under a State plan under title XIX was required under Federal law.

(c) FOR LOW-INCOME DISABLED PERSONS.—

(1) IN GENERAL.—Subject to subsection (e), a MediGrant plan shall provide that the percentage of funds expended under the plan for medical assistance for eligible low-income individuals who are under 65 years of age and are eligible for such assistance on the basis of a disability (including being blind) for a fiscal year is not less than the minimum low-income-disabled percentage specified in paragraph (2) of the total funds expended under the plan for medical assistance for the fiscal year.

(2) MINIMUM LOW-INCOME-DISABLED PERCENTAGE.—The minimum low-income-disabled percentage specified in this paragraph for a State is equal to 85 percent of the average percentage of the expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994 which was attributable to expenditures for medical assistance for mandated benefits furnished to individuals—

(A) whose coverage (at such time) under a State plan under title XIX was required under Federal law, and

(B) whose coverage (at such time) was on a basis directly related to disability status (including being blind).

(d) USE OF RESIDUAL FUNDS.—

(1) IN GENERAL.—Subject to limitations on payment under section 2123, any funds not required to be expended under the set-asides under the previous subsections may be expended under the MediGrant plan for any of the following:

(A) ADDITIONAL MEDICAL ASSISTANCE.—Medical assistance for eligible low-income individuals (as defined in sec-

tion 2171(b)), in addition to any medical assistance made available under a previous subsection.

(B) MEDICALLY-RELATED SERVICES.—Payment for medically-related services (as defined in paragraph (2)).

(C) ADMINISTRATION.—Payment for the administration of the MediGrant plan.

(2) MEDICALLY-RELATED SERVICES DEFINED.—In this title, the term "medically-related services" means services reasonably related to, or in direct support of, the State's attainment of one or more of the strategic objectives and performance goals established under section 2101, but does not include items and services included on the list under section 2171(a)(1) (relating to the definition of medical assistance).

(e) EXCEPTIONS TO MINIMUM SET-ASIDES.—

(1) ALTERNATIVE MINIMUM SET-ASIDES.—

(A) IN GENERAL.—A State may provide in its MediGrant plan (through an amendment to the plan) for a lower dollar amount of expenditures than the minimum amounts specified in any (or all) of paragraphs (2) of subsections (a), (b), and (c) if State determines (and certifies to the Secretary) that—

(i) the health care needs of the low-income populations described in paragraph (1) of the respective subsection who are eligible for medical assistance under the plan during the previous fiscal year (or medicare premium assistance needs described in subsection (b)(1)(B)) can be reasonably met without the expenditure of the amounts otherwise required to be expended, and

(ii) the performance goals established under section 2101 relating to the respective population can reasonably be met with such lower amount of funds expended.

(B) PERIOD OF APPLICATION.—The determination and certification under subparagraph (A) shall be made for such period as a State may request, but may not be made for a period of more than 3 consecutive Federal fiscal years (beginning with the first fiscal year for which the lower amount is sought). A new determination and certification must be made under such paragraph for any subsequent period.

(C) NO EXCEPTION PERMITTED BEFORE FISCAL YEAR 1998.—This paragraph may not apply with respect to a State for a fiscal year before fiscal year 1998.

(2) INDEPENDENT CERTIFICATION OF COMPLIANCE WITH GOALS.—

(A) IN GENERAL.—For purposes of section 2151(c), a MediGrant plan shall not be considered to be in substantial violation of the requirements of this section if the amount of actual State expenditures specified in any (or all) of paragraphs (1) of subsections (a), (b), and (c) is lower than the minimum amounts specified in any (or all) of paragraphs (2) of subsections (a), (b), and (c) if an independent actuary determines and certifies to the State that the MediGrant plan is reasonably designed to result in a level

of expenditures which is consistent with the requirements of such subsections.

(B) LIMIT ON VARIATION.—Subparagraph (A) shall not apply in the case of a MediGrant plan for which the actual State expenditures described in any (or all) of paragraphs (1) of subsections (a), (b), and (c) are less than 95 percent of the expenditures which would be made if the amount of State expenditures specified in any (or all) of such paragraphs was equal to the applicable minimum amount specified in any (or all) of paragraphs (2) of subsections (a), (b), and (c).

(3) TREATMENT OF STATES WITH NO OPTIONAL BENEFITS.—In the case of a State for which all expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994 were expenditures for medical assistance for mandated benefits, "75 percent" shall be substituted for "85 percent" each place it appears in paragraphs (2) of subsections (a), (b), and (c).

(f) COMPUTATIONS.—

(1) MINIMUM PERCENTAGES.—States shall calculate the minimum percentages under subsections (a)(2), (b)(2), and (c)(2) in a reasonable manner consistent with reports submitted to the Secretary for the fiscal years involved.

(2) EXCLUSION OF PAYMENTS FOR CERTAIN ALIENS.—For purposes of this section, medical assistance attributable to the exception provided under section 1903(v)(2) shall not be considered to be expenditures for medical assistance.

(g) BENEFITS INCLUDED FOR PURPOSES OF COMPUTING SET ASIDES.—In this section, the term "mandated benefits"—

(1) means medical assistance for items and services described in section 1905(a) to the extent such assistance with respect to such items and services was required to be provided under title XIX,

(2) includes medical assistance for medicare cost-sharing only to the extent such assistance was required to be provided under section 1902(a)(10)(E), and

(3) does not include medical assistance attributable to disproportionate share payment adjustments described in section 1923.

SEC. 2113. PREMIUMS AND COST-SHARING.

(a) IN GENERAL.—Subject to subsection (b), if any charges are imposed under the MediGrant plan for cost-sharing (as defined in subsection (d)), such cost-sharing shall be pursuant to a public cost-sharing schedule.

(b) LIMITATION ON PREMIUM AND CERTAIN COST-SHARING FOR LOW-INCOME FAMILIES INCLUDING CHILDREN OR PREGNANT WOMEN.—

(1) IN GENERAL.—In the case of a family described in paragraph (2)—

(A) the plan shall not impose any premium, and

(B) the plan shall not (except as provided in subsection (c)(1)) impose any cost-sharing with respect to primary and preventive care services (as defined by the State) covered

under the MediGrant plan for children or pregnant women unless such cost-sharing is nominal in nature.

(2) FAMILY DESCRIBED.—A family described in this paragraph is a family (which may be an individual) which—

(A) includes a child or a pregnant woman,

(B) is made eligible for medical assistance under the MediGrant plan, and

(C) the income of which does not exceed 100 percent of the poverty line applicable to a family of the size involved.

(c) CERTAIN COST-SHARING PERMITTED.—Nothing in this section shall be construed as preventing a MediGrant plan (consistent with subsection (b))—

(1) from imposing cost-sharing to discourage the inappropriate use of emergency medical services (delivered through a hospital emergency room, a medical transportation provider, or otherwise);

(2) from imposing premiums and cost-sharing differentially in order to encourage the use of primary and preventive care and discourage unnecessary or less economical care;

(3) from scaling cost-sharing in a manner that reflects economic factors, employment status, and family size;

(4) from scaling cost-sharing based on the availability to the individual or family of other health insurance coverage; or

(5) from scaling cost-sharing based on participation in employment training program, drug or alcohol abuse treatment, counseling programs, or other programs promoting personal responsibility.

(d) COST-SHARING DEFINED.—In this section, the term "cost-sharing" includes copayments, deductibles, coinsurance, and other charges for the provision of health care services.

SEC. 2114. DESCRIPTION OF PROCESS FOR DEVELOPING CAPITATION PAYMENT RATES.

(a) IN GENERAL.—If a State contracts (or intends to contract) with a capitated health care organization (as defined in subsection (c)(1)) under which the State makes a capitation payment (as defined in subsection (c)(2)) to the organization for providing or arranging for the provision of medical assistance under the MediGrant plan for a group of services (including at least inpatient hospital services and physicians' services), the plan shall include a description of the following:

(1) USE OF ACTUARIAL SCIENCE.—The extent and manner in which the State uses actuarial science—

(A) to analyze and project health care expenditures and utilization for individuals enrolled (or to be enrolled) in such an organization under the MediGrant plan, and

(B) to develop capitation payment rates, including a brief description of the general methodologies used by actuaries.

(2) QUALIFICATIONS OF ORGANIZATIONS.—The general qualifications (including any accreditation, State licensure or certification, or provider network standards) required by the State for participation of capitated health care organizations under the MediGrant plan.

(3) DISSEMINATION PROCESS.—The process used by the State under subsection (b) and otherwise to disseminate, before enter-

ing into contracts with capitated health care organizations, actuarial information to such organizations on the historical fee-for-service costs (or, if not available, other recent financial data associated with providing covered services) and utilization associated with individuals described in paragraph (1)(A).

(b) PUBLIC NOTICE AND COMMENT.—Under the MediGrant plan the State shall provide a process for providing, before the beginning of each contract year—

(1) public notice of—

(A) the amounts of the capitation payments (if any) made under the plan for the contract year preceding the public notice, and

(B)(i) the information described under subsection (a)(1) with respect to capitation payments for the contract year involved or (ii) the amounts of the capitation payments the State expects to make for the contract year involved,

unless such information is designated as proprietary and not subject to public disclosure under State law; and

(2) an opportunity for receiving public comment on the amounts and information for which notice is provided under paragraph (1).

(c) DEFINITIONS.—In this title:

(1) CAPITATED HEALTH CARE ORGANIZATION.—The term "capitated health care organization" means a health maintenance organization or any other entity (including a health insuring organization, managed care organization, prepaid health plan, integrated service network, or similar entity) which under State law is permitted to accept capitation payments for providing (or arranging for the provision of) a group of items and services including at least inpatient hospital services and physicians' services.

(2) CAPITATION PAYMENT.—The term "capitation payment" means, with respect to payment, payment on a prepaid capitation basis or any other risk basis to an entity for the entity's provision (or arranging for the provision) of a group of items and services (including at least inpatient hospital services and physicians' services).

SEC. 2115. CONSTRUCTION.

(a) NO FEDERAL ENTITLEMENT.—Nothing in this title (including section 2112) shall be construed as creating an entitlement under Federal law in any individual or category of individuals for medical assistance under a MediGrant plan.

(b) STATE FLEXIBILITY IN BENEFITS, PROVIDER PAYMENTS, GEOGRAPHICAL COVERAGE AREA, AND SELECTION OF PROVIDERS.—Nothing in this title (other than section 2111(b)) shall be construed as requiring a State—

(1) to provide medical assistance for any particular items or services;

(2) subject to section 2111(c), to provide for any payments with respect to any specific health care providers or any level of payments for any services;

(3) to provide for the same medical assistance in all geographical areas or political subdivisions of the State;

(4) to provide that the medical assistance made available to any individual eligible for medical assistance must not be less in amount, duration, or scope than the medical assistance made available to any other such individual; or

(5) to provide that any individual eligible for medical assistance with respect to an item or service may choose to obtain such assistance from any institution, agency, or person qualified to provide the item or service.

(c) STATE FLEXIBILITY WITH RESPECT TO MANAGED CARE.—Nothing in this title shall be construed—

(1) to limit a State's ability to contract with, on a capitated basis or otherwise, health care plans or individual health care providers for the provision or arrangement of medical assistance;

(2) to limit a State's ability to contract with health care plans or other entities for case management services or for coordination of medical assistance; or

(3) to restrict a State from establishing capitation rates on the basis of competition among health care plans or negotiations between the State and one or more health care plans.

SEC. 2116. LIMITATIONS ON CAUSES OF ACTION.

(a) IN GENERAL.—Notwithstanding any other provision of this Act (including section 1130A), no person (including an applicant, beneficiary, provider, or health plan) shall have a cause of action under Federal law against a State in relation to a State's compliance (or failure to comply) with the provisions of this title or of a MediGrant plan.

(b) NO EFFECT ON STATE LAW.—Nothing in subsection (a) may be construed as affecting any actions brought under State law.

PART C—PAYMENTS TO STATES

SEC. 2121. ALLOTMENT OF FUNDS AMONG STATES.

(a) ALLOTMENTS.—

(1) COMPUTATION.—The Secretary shall provide for the computation of State obligation and outlay allotments in accordance with this section for each fiscal year beginning with fiscal year 1996.

(2) LIMITATION ON OBLIGATIONS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall not enter into obligations with any State under this title for a fiscal year in excess of the obligation allotment for that State for the fiscal year under paragraph (4). The sum of such obligation allotments for all States in any fiscal year (excluding amounts carried over under subparagraph (B) and excluding changes in allotments effected under paragraph (4)(D)) shall not exceed the aggregate limit on new obligation authority specified in paragraph (3) for that fiscal year.

(B) ADJUSTMENTS.—

(i) CARRYOVER OF ALLOTMENT PERMITTED.—If the amount of obligations entered into under this part with a State for quarters in a fiscal year is less than the amount of the obligation allotment under this section

to the State for the fiscal year, the amount of the difference shall be added to the amount of the State obligation allotment otherwise provided under this section for the succeeding fiscal year.

(ii) REDUCTION FOR POST-ENACTMENT NEW OBLIGATIONS UNDER TITLE XIX IN FISCAL YEAR 1996.—The amount of the obligation allotment otherwise provided under this section for fiscal year 1996 for a State shall be reduced by the amount of the obligations entered into with respect to the State under section 1903(a) after the date of the enactment of this Act.

(3) AGGREGATE LIMIT ON NEW OBLIGATION AUTHORITY.—

(A) IN GENERAL.—For purposes of this subsection, subject to subparagraph (C), the "aggregate limit on new obligation authority", for a fiscal year, is the pool amount under subsection (b) for the fiscal year, divided by the payout adjustment factor (described in subparagraph (B)) for the fiscal year.

(B) PAYOUT ADJUSTMENT FACTOR.—For purposes of this subsection, the "payout adjustment factor"—

(i) for fiscal year 1996 is .950,

(ii) for fiscal year 1997 is .986, and

(iii) for a subsequent fiscal year is .998.

(C) TRANSITIONAL ADJUSTMENT FOR PRE-ENACTMENT-OBLIGATION OUTLAYS.—In order to account for pre-enactment-obligation outlays described in paragraph (4)(C)(iv), in determining the aggregate limit on new obligation authority under subparagraph (A) for fiscal year 1996, the pool amount for such fiscal year is equal to—

(i) the pool amount for such year, reduced by

(ii) $24.624 billion.

(4) OBLIGATION ALLOTMENTS.—

(A) GENERAL RULE FOR 50 STATES AND THE DISTRICT OF COLUMBIA.—Except as provided in this paragraph, the "obligation allotment" for any of the 50 States or the District of Columbia for a fiscal year (beginning with fiscal year 1997) is an amount that bears the same ratio to the outlay allotment under subsection (c)(2) for such State or District (not taking into account any adjustment due to an election under paragraph (4)) for the fiscal year as the ratio of—

(i) the aggregate limit on new obligation authority (less the total of the obligation allotments under subparagraph (B)) for the fiscal year, to

(ii) the pool amount (less the sum of the outlay allotments for the territories) for such fiscal year.

(B) TERRITORIES.—The obligation allotment for each of the Commonwealths and territories for a fiscal year is the outlay allotment for such Commonwealth or territory (as determined under subsection (c)(5)) for the fiscal year divided by the payout adjustment factor for the fiscal year (as defined in paragraph (3)(B)).

(C) TRANSITIONAL RULE FOR FISCAL YEAR 1996.—

(i) IN GENERAL.—The obligation amount for fiscal year 1996 for any State (including the District, a Com-

monwealth, or territory) is determined according to the formula: $A=(B-C)/D$, where—

(I) "A" is the obligation amount for such State;

(II) "B" is the outlay allotment of such State for fiscal year 1996, as determined under subsection (c);

(III) "C" is the amount of the pre-enactment-obligation outlays (as established for such State under clause (ii)); and

(IV) "D" is the payout adjustment factor for such fiscal year (as defined in paragraph (3)(B)).

(ii) PRE-ENACTMENT-OBLIGATION OUTLAY AMOUNTS.—Within 30 days after the date of the enactment of this title, the Secretary shall estimate (based on the best data available) and publish in the Federal Register the amount of the pre-enactment-obligation outlays (as defined in clause (iv)) for each State (including the District, Commonwealths, and territories). The total of such amounts shall equal the dollar amount specified in paragraph (3)(C)(ii).

(iii) AGREEMENT.—The submission of a MediGrant plan by a State under this title is deemed to constitute the State's acceptance of the obligation allotment limitations under this subsection (including the formula for computing the amount of such obligation allotment).

(iv) PRE-ENACTMENT-OBLIGATION OUTLAYS DEFINED.—In this subsection, the term "pre-enactment-obligation outlays" means, for a State, the outlays of the Federal Government that result from obligations that have been incurred under title XIX with respect to the State before the date of the enactment of this title, but for which payments to States have not been made as of such date of enactment.

(D) ADJUSTMENT TO REFLECT ADOPTION OF ALTERNATIVE GROWTH FORMULA.—Any State that has elected an alternative growth formula under subsection (c)(4) which increases or decreases the dollar amount of an outlay allotment for a fiscal year is deemed to have increased or decreased, respectively, its obligation amount for such fiscal year by the amount of such increase or decrease.

(b) POOL OF AVAILABLE FUNDS.—

(1) IN GENERAL.—For purposes of this section, the "pool amount" under this subsection for—

(A) fiscal year 1996 is $95.673 billion;

(B) fiscal year 1997 is $102.135 billion;

(C) fiscal year 1998 is $106.221 billion;

(D) fiscal year 1999 is $110.469 billion;

(E) fiscal year 2000 is $114.888 billion;

(F) fiscal year 2001 is $119.483 billion;

(G) fiscal year 2002 is $124.263 billion; and

(H) each subsequent fiscal year is the pool amount under this paragraph for the previous fiscal year increased by the lesser of 4 percent or the annual percentage increase in the consumer price index for all urban consumers (U.S. city av-

erage) for the 12-month period ending in June before the beginning of that subsequent fiscal year.

(2) NATIONAL MEDIGRANT GROWTH PERCENTAGE.—For purposes of this section for a fiscal year (beginning with fiscal year 1997), the "national MediGrant growth percentage" is the percentage by which—

(A) the pool amount under paragraph (1) for the fiscal year, exceeds

(B) such pool amount for the previous fiscal year.

(c) STATE OUTLAY ALLOTMENTS.—

(1) FISCAL YEAR 1996.—

(A) IN GENERAL.—For each of the 50 States and the District of Columbia, the amount of the State outlay allotment under this subsection for fiscal year 1996 is, subject to paragraph (4), equal to—

(i) the total amount of Federal expenditures made to the State under title XIX for the 4 quarters in fiscal year 1994, increased by

(ii) the percentage by which (I) $95,529,490,500 (which represents the total amount of outlay allotments for such States and District for fiscal year 1996), exceeds (II) $83,213,431,458 (which represents Federal medicaid expenditures for such States and District for fiscal year 1994).

(B) COMPUTATION OF EXPENDITURES.—The amount of Federal expenditures described in subparagraph (A)(i) shall be computed, using data reported on the HCFA Form 64 as of September 1, 1995, based on—

(i) the amount reported on line 11, or

(ii) on the amount reported on line 6 multiplied by the ratio of (I) the sum of the amounts so reported on line 11 of such Form for fiscal year 1994 for the 50 States and the District of Columbia, to (II) the sum of the amounts so reported on line 6 of such Form for fiscal year 1994 for such States and District,

whichever is greater.

(C) LIMITATION ON ADJUSTMENT.—The amount computed under subparagraph (B) shall not be subject to adjustment (based on any subsequent disallowances or otherwise).

(2) COMPUTATION OF STATE OUTLAY ALLOTMENTS.—

(A) IN GENERAL.—Subject to the succeeding provisions of this subsection, the amount of the State outlay allotment under this subsection for one of the 50 States and the District of Columbia for a fiscal year (beginning with fiscal year 1997) is equal to the product of—

(i) the needs-based amount determined under subparagraph (B) for the State for the fiscal year, and

(ii) the scalar factor described in subparagraph (C) for the fiscal year.

(B) NEEDS-BASED AMOUNT.—The needs-based amount under this subparagraph for a State for a fiscal year is equal to the product of—

(i) the State's aggregate expenditure need for the fiscal year (as determined under subsection (d)), and

(ii) the State's old Federal medical assistance percentage (as defined in section 2122(d)) for the previous fiscal year (or, in the case of fiscal year 1997, the Federal medical assistance percentage determined under section 1905(b) for fiscal year 1996).

(C) SCALAR FACTOR.—The scalar factor under this subparagraph for a fiscal year is such proportion so that, when it is applied under subparagraph (A)(ii) for the fiscal year (taking into account the floors and ceilings under paragraph (3)), the total of the outlay allotments under this subsection for all the 50 States and the District of Columbia for the fiscal year (not taking into account any increase in an outlay allotment for a fiscal year attributable to the election of an alternative growth formula under paragraph (4)) is equal to the amount by which (i) the pool amount for the fiscal year (as determined under subsection (b)), exceeds (ii) the sum of the outlay allotments provided under paragraph (5) for the Commonwealths and territories for the fiscal year.

(3) FLOORS AND CEILINGS.—

(A) FLOORS.—In no case shall the amount of the State outlay allotment under paragraph (2) for a fiscal year be less than the following:

(i) FLOOR BASED ON PREVIOUS YEAR'S OUTLAY ALLOTMENT.—102 percent of the amount of the State outlay allotment under this subsection for the previous fiscal year.

(ii) FLOOR BASED ON OUTLAY ALLOTMENT GROWTH RATE IN FIRST YEAR.—Beginning with fiscal year 1998, in the case of a State for which the outlay allotment under this subsection for fiscal year 1997 exceeded its outlay allotment under this subsection for the previous fiscal year by—

(I) more than 125 percent of the national MediGrant growth percentage for fiscal year 1997, 104 percent of the amount of the State outlay allotment under this subsection for the previous fiscal year; or

(II) less than 125 percent (but more than 75 percent) of the national MediGrant growth percentage for fiscal year 1997, 103 percent of the amount of the State outlay allotment under this subsection for the previous fiscal year.

(B) CEILING.—

(i) IN GENERAL.—Subject to clause (ii), in no case shall the amount of the State outlay allotment under paragraph (2) for a fiscal year be greater than the product of—

(I) the State outlay allotment under this subsection for the State for the preceding fiscal year, and

(II) 133 percent of the national MediGrant growth percentage (as determined under subsection (b)(2)) for the fiscal year involved.

(ii) SPECIAL RULE.—For a fiscal year after fiscal year 1997, in the case of a State (among the 50 States and the District of Columbia) that is one of the 10 States with the lowest Federal MediGrant spending per resident-in-poverty rates (as determined under clause (iii)) for the fiscal year, the reference in clause (i)(II) to "133 percent" is deemed a reference to "150 percent".

(iii) DETERMINATION OF FEDERAL MEDIGRANT SPENDING PER RESIDENT-IN-POVERTY RATE.—For purposes of clause (ii), the "Federal MediGrant spending per resident-in-poverty rate" for a State for a fiscal year is equal to—

(I) the State's outlay allotment under this subsection for the previous fiscal year (determined without regard to paragraph (4)), divided by

(II) the average annual number of residents of the State in poverty (as defined in subsection (d)(2)) with respect to the fiscal year.

(4) ELECTION OF ALTERNATIVE GROWTH FORMULA.—

(A) ELECTION.—In order to reduce variations in increases in outlay allotments over time, any of the 50 States or the District of Columbia may elect (by notice provided to the Secretary by not later than April 1, 1996) to adopt an alternative growth rate formula under this paragraph for the determination of the State's outlay allotment in fiscal year 1996 and for the increase in the amount of such allotment in subsequent fiscal years.

(B) FORMULA.—The alternative growth formula under this paragraph may be any formula under which a portion of the State outlay allotment for fiscal year 1996 under paragraph (1) is deferred and applied to increase the amount of its outlay allotment for one or more subsequent fiscal years, so long as the total amount of such increases for all such subsequent fiscal years does not exceed the amount of the outlay allotment deferred from fiscal year 1996.

(5) COMMONWEALTHS AND TERRITORIES.—The outlay allotment for each of the Commonwealths and territories for a fiscal year is the maximum amount that could have been certified under section 1108(c) with respect to the Commonwealth or territory for the fiscal year with respect to title XIX, if the national MediGrant growth percentage (as determined under subsection (b)(2)) for the fiscal year had been substituted (beginning with fiscal year 1997) for the percentage increase referred to in section 1108(c)(1)(B).

(d) STATE AGGREGATE EXPENDITURE NEED DETERMINED.—

(1) IN GENERAL.—For purposes of subsection (c), the "State aggregate expenditure need" for a State for a fiscal year is equal to the product of the following 4 factors:

(A) RESIDENTS IN POVERTY.—The average annual number of residents in poverty of the State with respect to the fiscal year (as determined under paragraph (2)).

(B) CASE MIX INDEX.—The average of the case mix indexes for the State (as determined under paragraph (3)) for

the 3 most recent fiscal years for which data are available, but in no case less than .9 or greater than 1.15.

(C) INPUT COST INDEX.—The average of the input cost indexes for the State (as determined under paragraph (4)) for the 3 most recent fiscal years for which data are available.

(D) NATIONAL AVERAGE SPENDING PER RESIDENT IN POVERTY.—The national average spending per resident in poverty (as determined under paragraph (5)).

(2) RESIDENTS IN POVERTY.—In this section—

(A) IN GENERAL.—The term "average annual number of residents in poverty" means, with respect to a State and a fiscal year, the average annual number of residents in poverty (as defined in subparagraph (B)) in the State (based on data made generally available by the Bureau of the Census from the Current Population Survey) for the most recent 3-calendar-year period (ending before the fiscal year) for which such data are available.

(B) RESIDENT IN POVERTY DEFINED.—The term "resident in poverty" means an individual whose family income does not exceed the poverty threshold (as such terms are defined by the Office of Management and Budget and are generally interpreted and applied by the Bureau of the Census for the year involved).

(3) CASE MIX INDEX.—

(A) IN GENERAL.—In this subsection, the "case mix index" for a State for a fiscal year is equal to—

(i) the sum of—

(I) the projected per recipient expenditures with respect to elderly individuals in the State for the fiscal year (determined under subparagraph (B)),

(II) the projected per recipient expenditures with respect to the blind and disabled individuals in the State for the fiscal year (determined under subparagraph (C)), and

(III) the projected per recipient expenditures with respect to other individuals in the State (determined under subparagraph (D));

divided by—

(ii) the national average spending per recipient determined under subparagraph (E) for the fiscal year involved.

(B) PROJECTED PER RECIPIENT EXPENDITURES FOR THE ELDERLY.—For purposes of subparagraph (A)(I)(i), the "projected per recipient expenditures with respect to elderly individuals" in a State for a fiscal year is equal to the product of—

(i) the national average per recipient expenditures under this title in the 50 States and the District of Columbia for the most recent fiscal year for which data are available for individuals who are 65 years of age or older, and

(ii) the proportion, of all individuals who received medical assistance under this title in the State in the

most recent fiscal year referred to in clause (i), that were individuals described in such clause.

(C) PROJECTED PER RECIPIENT EXPENDITURES FOR THE BLIND AND DISABLED.—For purposes of subparagraph (A)(i)(II), the "projected per recipient expenditures with respect to blind and disabled individuals" in a State for a fiscal year is equal to the product of—

(i) the national average per recipient expenditures under this title in the 50 States and the District of Columbia for the most recent fiscal year for which data are available for individuals who are eligible for medical assistance because they are blind or disabled and under 65 years of age, and

(ii) the proportion, of all individuals who received medical assistance under this title in the State in the most recent fiscal year referred to in clause (i), that were individuals described in such clause.

(D) PROJECTED PER RECIPIENT EXPENDITURES FOR OTHER INDIVIDUALS.—For purposes of subparagraph (A)(i)(III), the "projected per recipient expenditures with respect to other individuals" in a State for a fiscal year is equal to the product of—

(i) the national average per recipient expenditures under this title in the 50 States and the District of Columbia for the most recent fiscal year for which data are available for individuals who are not described in subparagraph (B)(i) or (C)(i), and

(ii) the proportion, of all individuals who received medical assistance under this title in the State in the most recent fiscal year referred to in clause (i), that were individuals described in such clause.

(E) NATIONAL AVERAGE SPENDING PER RECIPIENT.—For purposes of this paragraph, the "national average expenditures per recipient" for a fiscal year is equal to the sum of—

(i) the product of (I) the national average described in subparagraph (B)(i), and (II) the proportion, of all individuals who received medical assistance under this title in any of the 50 States or the District of Columbia in the fiscal year referred to in such subparagraph, who are described in such subparagraph;

(ii) the product of (I) the national average described in subparagraph (C)(i), and (II) the proportion, of all individuals who received medical assistance under this title in any of the 50 States or the District of Columbia in the fiscal year referred to in such subparagraph, who are described in such subparagraph; and

(iii) the product of (I) the national average described in subparagraph (D)(i), and (II) the proportion, of all individuals who received medical assistance under this title in any of the 50 States or the District of Columbia in the fiscal year referred to in such subparagraph, who are described in such subparagraph.

(F) DETERMINATION OF NATIONAL AVERAGES AND PROPORTIONS.—

(i) IN GENERAL.—The national averages per recipient and the proportions referred to in clauses (i) and (ii), respectively, of subparagraphs (B), (C), and (D) and subparagraph (E) shall be determined by the Secretary using the most recent data available.

(ii) USE OF MEDICAID DATA.—If for a fiscal year there is inadequate data to compute such averages and proportions based on expenditures and numbers of individuals receiving medical assistance under this title, the Secretary may compute such averages based on expenditures and numbers of such individuals under title XIX for the most recent fiscal year for which data are available and, for this purpose—

(I) any reference in subparagraph (B)(i) to "individuals 65 years of age or older" is deemed a reference to "individuals whose eligibility for medical assistance is based on being 65 years of age or older",

(II) the reference in subparagraph (C)(i) to "and under 65 years of age" shall be considered to be deleted, and

(III) individuals whose basis for eligibility for medical assistance was reported as unknown shall not be counted as individuals under subparagraph (D)(i).

(4) INPUT COST INDEX.—

(A) IN GENERAL.—In this section, the "input cost index" for a State for a fiscal year is the sum of—

(i) 0.15, and

(ii) 0.85 multiplied by the ratio of (I) the annual average wages for hospital employees in the State for the fiscal year (as determined under subparagraph (B)), to (II) the annual average wages for hospital employees in the 50 States and the District of Columbia for such year (as determined under such subparagraph).

(B) DETERMINATION OF ANNUAL AVERAGE WAGES OF HOSPITAL EMPLOYEES.—The Secretary shall provide for the determination of annual average wages for hospital employees in a State and, collectively, in the 50 States and the District of Columbia for a fiscal year based on the area wage index applicable to hospitals under 1886(d)(2)(E) (or, if such index no longer exists, a comparable index of hospital wages) for discharges occurring during the fiscal year involved.

(5) NATIONAL AVERAGE SPENDING PER RESIDENT IN POVERTY.—For purposes of this subsection, the "national average spending per resident in poverty"—

(A) for fiscal year 1997 is equal to—

(i) the sum (for each of the 50 States and the District of Columbia) of the total of the Federal and State expenditures under title XIX for calendar quarters in fiscal year 1994, increased by the percentage specified in subsection (c)(1)(A)(ii), divided by

(ii) the sum of the number of residents in poverty (as defined in paragraph (2)(A)) for all of the 50 States and the District of Columbia for fiscal year 1994;

(B) for a succeeding fiscal year is equal to the national average spending per resident in poverty under this paragraph for the preceding fiscal year increased by the national MediGrant growth percentage (as defined in subsection (b)(2)) for the fiscal year involved.

(e) PUBLICATION OF OBLIGATION AND OUTLAY ALLOTMENTS.—

(1) NOTICE OF PRELIMINARY ALLOTMENTS.—Not later than April 1 before the beginning of each fiscal year (beginning with fiscal year 1997), the Secretary shall initially compute, after consultation with the Comptroller General, and publish in the Federal Register notice of the proposed obligation and outlay allotments for each State under this section (not taking into account subsection (a)(2)(B)) for the fiscal year. The Secretary shall include in the notice a description of the methodology and data used in deriving such allotments for the year.

(2) REVIEW BY GAO.—The Comptroller General shall submit to Congress by not later than May 15 of each such fiscal year, a report analyzing such allotments and the extent to which they comply with the precise requirements of this section.

(3) NOTICE OF FINAL ALLOTMENTS.—Not later than July 1 before the beginning of each such fiscal year, the Secretary, taking into consideration the analysis contained in the report of the Comptroller General under paragraph (2), shall compute and publish in the Federal Register notice of the final allotments under this section (both taking into account and not taking into account subsection (a)(2)(B)) for the fiscal year. The Secretary shall include in the notice a description of any changes in such allotments from the initial allotments published under paragraph (1) for the fiscal year and the reasons for such changes. Once published under this paragraph, the Secretary is not authorized to change such allotments.

(4) GAO REPORT ON FINAL ALLOTMENTS.—The Comptroller General shall submit to Congress by not later than August 1 of each such fiscal year, a report analyzing the final allotments under paragraph (3) and the extent to which they comply with the precise requirements of this section.

SEC. 2122. PAYMENTS TO STATES.

(a) AMOUNT OF PAYMENT.—From the allotment of a State under section 2121 for a fiscal year, subject to the succeeding provisions of this title, the Secretary shall pay to each State which has a MediGrant plan approved under part E, for each quarter in the fiscal year—

(1) an amount equal to the applicable Federal medical assistance percentage (as defined in subsection (c)) of the total amount expended during such quarter as medical assistance under the plan; plus

(2) an amount equal to the applicable Federal medical assistance percentage of the total amount expended during such quarter for medically-related services (as defined in section 2112(e)(2)); plus

(3) subject to section 2123(c)—

(A) an amount equal to 90 percent of the amounts expended during such quarter for the design, development, and installation of information systems and for providing incentives to promote the enforcement of medical support orders, plus

(B) an amount equal to 75 percent of the amounts expended during such quarter for medical personnel, administrative support of medical personnel, operation and maintenance of information systems, modification of information systems, quality assurance activities, utilization review, medical and peer review, anti-fraud activities, independent evaluations, coordination of benefits, and meeting reporting requirements under this title, plus

(C) an amount equal to 50 percent of so much of the remainder of the amounts expended during such quarter as are expended by the State in the administration of the State plan.

(b) PAYMENT PROCESS.—

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

(2) PAYMENT.—

(A) IN GENERAL.—The Secretary shall then pay to the State, in such installments as the Secretary may determine and in accordance with section 6503(a) of title 31, United States Code, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section (or section 1903) to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection (or under section 1903(d)).

(B) TREATMENT AS OVERPAYMENTS.—Expenditures for which payments were made to the State under subsection (a) shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 2135.

(C) RECOVERY OF OVERPAYMENTS.—For purposes of this subsection, when an overpayment is discovered, which was made by a State to a person or other entity, the State shall have a period of 60 days in which to recover or attempt to recover such overpayment before adjustment is made in the Federal payment to such State on account of such overpay-

ment. Except as otherwise provided in subparagraph (D), the adjustment in the Federal payment shall be made at the end of the 60 days, whether or not recovery was made.

(D) NO ADJUSTMENT FOR UNCOLLECTABLES.—In any case where the State is unable to recover a debt which represents an overpayment (or any portion thereof) made to a person or other entity on account of such debt having been discharged in bankruptcy or otherwise being uncollectable, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or portion thereof).

(3) FEDERAL SHARE OF RECOVERIES.—The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(4) TIMING OF OBLIGATION OF FUNDS.—Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(5) DISALLOWANCES.—In any case in which the Secretary estimates that there has been an overpayment under this section to a State on the basis of a claim by such State that has been disallowed by the Secretary under section 1116(d), and such State disputes such disallowance, the amount of the Federal payment in controversy shall, at the option of the State, be retained by such State or recovered by the Secretary pending a final determination with respect to such payment amount. If such final determination is to the effect that any amount was properly disallowed, and the State chose to retain payment of the amount in controversy, the Secretary shall offset, from any subsequent payments made to such State under this title, an amount equal to the proper amount of the disallowance plus interest on such amount disallowed for the period beginning on the date such amount was disallowed and ending on the date of such final determination at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly 90-day treasury bill auction rates during such period.

(c) APPLICABLE FEDERAL MEDICAL ASSISTANCE PERCENTAGE DEFINED.—In this section, except as provided in subsection (f), the term "applicable Federal medical assistance percentage" means, with respect to one of the 50 States or the District of Columbia, at the State's or District's option—

(1) the old Federal medical assistance percentage (as determined in subsection (d)), or

(2) the new Federal medical assistance percentage (as determined under subsection (e)) or, if less, the old Federal medical assistance percentage plus 10 percentage points.

(d) OLD FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—

(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (f), the term "old Federal medical assistance percentage" for any State is 100 percent less the State percentage; and the State percentage is that percentage which bears the same ratio to 45 percent as the square of the per capita income of

such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii.

(2) LIMITATION ON RANGE.—In no case shall the old Federal medical assistance percentage be less than 50 percent or more than 83 percent.

(3) PROMULGATION.—The old Federal medical assistance percentage for any State shall be determined and promulgated in accordance with the provisions of section 1101(a)(8)(B).

(e) NEW FEDERAL MEDICAL ASSISTANCE PERCENTAGE DEFINED.—

(1) IN GENERAL.—

(A) TERM DEFINED.—Except as provided in paragraph (3) and subsection (f), the term "new Federal medical assistance percentage" means, for each of the 50 States and the District of Columbia, 100 percent reduced by the product 0.39 and the ratio of—

(i)(I) for each of the 50 States, the total taxable resources (TTR) ratio of the State specified in subparagraph (B), or

(II) for the District of Columbia, the per capita income ratio specified in subparagraph (C),

to—

(ii) the aggregate expenditure need ratio of the State or District, as described in subparagraph (D).

(B) TOTAL TAXABLE RESOURCES (TTR) RATIO.—For purposes of subparagraph (A)(i)(I), the total taxable resources (TTR) ratio for each of the 50 States is—

(i) an amount equal to the most recent 3-year average of the total taxable resources (TTR) of the State, as determined by the Secretary of the Treasury, divided by

(ii) an amount equal to the sum of the 3-year averages determined under clause (i) for each of the 50 States.

(C) PER CAPITA INCOME RATIO.—For purposes of subparagraph (A)(i)(II), the per capita income ratio of the District of Columbia is—

(i) an amount equal to the most recent 3-year average of the total personal income of the District of Columbia, as determined in accordance with the provisions of section 1101(a)(8)(B), divided by

(ii) an amount equal to the total personal income of the continental United States (including Alaska) and Hawaii, as determined under section 1101(a)(8)(B).

(D) AGGREGATE EXPENDITURE NEED RATIO.—For purposes of subparagraph (A), with respect to each of the 50 States and the District of Columbia for a fiscal year, the aggregate expenditure need ratio is—

(i) the State aggregate expenditure need (as defined in section 2121(d)) for the State for the fiscal year, divided by

(ii) the such of such State aggregate expenditure needs for the 50 States and the District of Columbia for the fiscal year.

(2) LIMITATION ON RANGE.—Except as provided in subsection (f), the new Federal medical assistance percentage shall in no case be less than 40 percent or greater than 83 percent.

(3) PROMULGATION.—The new Federal medical assistance percentage for any State shall be promulgated in a timely manner consistent with the promulgation of the old Federal medical assistance percentage under section 1101(a)(8)(B).

(f) SPECIAL RULES.—For purposes of this title—

(1) COMMONWEALTHS AND TERRITORIES.—In the case of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa, the old and new Federal medical assistance percentages are 50 percent.

(2) INDIAN HEALTH SERVICE FACILITIES.—

(A) IN GENERAL.—The old and new Federal medical assistance percentages shall be 100 percent with respect to the amounts expended as medical assistance for services which are received through a facility described in subparagraph (B) of an Indian tribe or tribal organization or through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 4 of the Indian Health Care Improvement Act).

(B) FACILITY DESCRIBED.—For purposes of subparagraph (A), a facility described in this subparagraph is a facility of an Indian tribe if—

(i) the facility is located in a State which, as of the date of the enactment of this title, was not operating its State plan under title XIX pursuant to a Statewide waiver approved under section 1115,

(ii) the facility is not an Indian Health Service facility,

(iii) the tribe owns at least 2 such facilities, and

(iv) the tribe has at least 50,000 members (as of the date of the enactment of this title).

(3) NO STATE MATCHING REQUIRED FOR CERTAIN EXPENDITURES.—In applying subsection (a)(1) with respect to medical assistance provided to unlawful aliens pursuant to the exception specified in section 2123(e)(2), payment shall be made for the amount of such assistance without regard to any need for a State match.

SEC. 2123. LIMITATION ON USE OF FUNDS; DISALLOWANCE.

(a) IN GENERAL.—Funds provided to a State under this title shall only be used to carry out the purposes of this title.

(b) DISALLOWANCES FOR EXCLUDED PROVIDERS.—

(1) IN GENERAL.—Payment shall not be made to a State under this part for expenditures for items and services furnished—

(A) by a provider who was excluded from participation under title V, XVIII, or XX or under this title pursuant to section 1128, 1128A, 1156, or 1842(j)(2), or

(B) under the medical direction or on the prescription of a physician who was so excluded, if the provider of the services knew or had reason to know of the exclusion.

(2) EXCEPTION FOR EMERGENCY SERVICES.—Paragraph (1) shall not apply to emergency items or services, not including hospital emergency room services.

(c) LIMITATIONS.—

(1) IN GENERAL.—No Federal financial assistance is available for expenditures under the MediGrant plan for—

(A) medically-related services for a quarter to the extent such expenditures exceed 5 percent of the total expenditures under the plan for the quarter; or

(B) total administrative expenses (other than expenses described in paragraph (2) during the first 8 quarters in which the plan is in effect under this title) for quarters in a fiscal year to the extent such expenditures exceed the sum of $20,000,000 plus 10 percent of the total expenditures under the plan for the year.

(2) ADMINISTRATIVE EXPENSES NOT SUBJECT TO LIMITATION.—The administrative expenses referred to in this paragraph are expenditures under the MediGrant plan for the following activities:

(A) Quality assurance.

(B) The development and operation of the certification program for nursing facilities and intermediate care facilities for the mentally retarded under section 2137(a)(2).

(C) Utilization review activities, including medical activities and activities of peer review organizations.

(D) Inspection and oversight of providers and capitated health care organizations.

(E) Anti-fraud activities.

(F) Independent evaluations.

(G) Activities required to meet reporting requirements under this title.

(d) TREATMENT OF THIRD PARTY LIABILITY.—No payment shall be made to a State under this part for expenditures for medical assistance provided for an individual under its MediGrant plan to the extent that a private insurer (as defined by the Secretary by regulation and including a group health plan (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), a service benefit plan, and a health maintenance organization) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation because the individual is eligible for or is provided medical assistance under the plan.

(e) LIMITATION ON PAYMENTS TO EMERGENCY SERVICES FOR NONLAWFUL ALIENS.—

(1) IN GENERAL.—Notwithstanding the preceding provisions of this section, except as provided in paragraph (2), no payment may be made to a State under this part for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

(2) EXCEPTION FOR EMERGENCY SERVICES.—Payment may be made under this section for care and services that are furnished to an alien described in paragraph (1) only if—

(A) such care and services are necessary for the treatment of an emergency medical condition of the alien,

(B) such alien otherwise meets the eligibility requirements for medical assistance under the MediGrant plan (other than a requirement of the receipt of aid or assistance under title IV, supplemental security income benefits under title XVI, or a State supplementary payment), and

(C) such care and services are not related to an organ transplant procedure.

(3) EMERGENCY MEDICAL CONDITION DEFINED.—For purposes of this subsection, the term "emergency medical condition" means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(A) placing the patient's health in serious jeopardy,

(B) serious impairment to bodily functions, or

(C) serious dysfunction of any bodily organ or part.

(f) LIMITATION ON PAYMENT FOR CERTAIN OUTPATIENT PRESCRIPTION DRUGS.—

(1) IN GENERAL.—No payment may be made to a State under this part for medical assistance for covered outpatient drugs (as defined in section 2175(i)(2)) of a manufacturer provided under the MediGrant plan unless the manufacturer (as defined in section 2175(i)(4)) of the drug—

(A) has entered into a MediGrant master rebate agreement with the Secretary under section 2175; and

(B) is complying with the provisions of section 8126 of title 38, United States Code, including the requirement of entering into a master agreement with the Secretary of Veterans Affairs under such section.

(2) CONSTRUCTION.—Nothing in this subsection shall be construed as requiring a State to participate in the MediGrant master rebate agreement under section 2175.

(3) EFFECT OF SUBSEQUENT AMENDMENTS.—For purposes of paragraph (1)(B), in determining whether a manufacturer is in compliance with the requirements of section 8126 of title 38, United States Code—

(A) the Secretary shall not take into account any amendments to such section that are enacted after the enactment of title VI of the Veterans Health Care Act of 1992; and

(B) a manufacturer is deemed to meet such requirements if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of section 8126 of title 38, United States Code (as in effect immediately after the enactment of the Veterans Health Care Act of 1992) and would have entered into an agreement under such section (as such section was in effect at such time), but for a legislative change in such section after the date of the enactment of the Veterans Health Care Act of 1992.

(g) LIMITATION ON PAYMENT FOR ABORTIONS.—

(1) IN GENERAL.—Payment shall not be made to a State under this part for any amount expended under the MediGrant

plan to pay for any abortion or to assist in the purchase, in whole or in part, of health benefit coverage that includes coverage of abortion.

(2) EXCEPTION.—Paragraph (1) shall not apply to an abortion—

(A) if the pregnancy is the result of an act of rape or incest, or

(B) in the case where a woman suffers from a physical disorder, illness, or injury that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(h) LIMITATION ON PAYMENT FOR ASSISTING DEATHS.—Payment shall not be made to a State under this part for amounts expended under the MediGrant plan to pay for, or to assist in the purchase, in whole or in part, of health benefit coverage that includes payment for any drug, biological product, or service which was furnished for the purpose of causing, or assisting in causing, the death, suicide, euthanasia, or mercy killing of a person.

PART D—PROGRAM INTEGRITY AND QUALITY

SEC. 2131. USE OF AUDITS TO ACHIEVE FISCAL INTEGRITY.

(a) FINANCIAL AUDITS OF PROGRAM.—

(1) IN GENERAL.—Each MediGrant plan shall provide for an annual audit of the State's expenditures from amounts received under this title, in compliance with chapter 75 of title 31, United States Code.

(2) VERIFICATION AUDITS.—If, after consultation with the State and the Comptroller General and after a fair hearing, the Secretary determines that a State's audit under paragraph (1) was performed in substantial violation of chapter 75 of title 31, United States Code, the Secretary may—

(A) require that the State provide for a verification audit in compliance with such chapter, or

(B) conduct such a verification audit.

(3) AVAILABILITY OF AUDIT REPORTS.—Within 30 days after completion of each audit or verification audit under this subsection, the State shall—

(A) provide the Secretary with a copy of the audit report, including the State's response to any recommendations of the auditor, and

(B) make the audit report available for public inspection in the same manner as proposed MediGrant plan amendments are made available under section 2105.

(b) FISCAL CONTROLS.—

(1) IN GENERAL.—With respect to the accounting and expenditure of funds under this title, each State shall adopt and maintain such fiscal controls, accounting procedures, and data processing safeguards as the State deems reasonably necessary to assure the fiscal integrity of the State's activities under this title.

(2) CONSISTENCY WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—Such controls and procedures shall be generally consistent with generally accepted accounting principles as rec-

ognized by the Governmental Accounting Standards Board or the Comptroller General.

(c) AUDITS OF PROVIDERS.—Each MediGrant plan shall provide that the records of any entity providing items or services for which payment may be made under the plan may be audited as necessary to ensure that proper payments are made under the plan.

SEC. 2132. FRAUD PREVENTION PROGRAM.

(a) ESTABLISHMENT.—Each MediGrant plan shall provide for the establishment and maintenance of an effective program for the detection and prevention of fraud and abuse by beneficiaries, providers, and others in connection with the operation of the program.

(b) PROGRAM REQUIREMENTS.—The program established pursuant to subsection (a) shall include at least the following requirements:

(1) DISCLOSURE OF INFORMATION.—Any disclosing entity (as defined in section 1124(a)) receiving payments under the MediGrant plan shall comply with the requirements of section 1124.

(2) SUPPLY OF INFORMATION.—An entity (other than an individual practitioner or a group of practitioners) that furnishes, or arranges for the furnishing of, an item or service under the MediGrant plan shall supply upon request specifically addressed to the entity by the Secretary or the State agency the information described in section 1128(b)(9).

(3) EXCLUSION.—

(A) IN GENERAL.—The MediGrant plan shall exclude any specified individual or entity from participation in the plan for the period specified by the Secretary when required by the Secretary to do so pursuant to section 1128 or section 1128A, and provide that no payment may be made under the plan with respect to any item or service furnished by such individual or entity during such period.

(B) AUTHORITY.—In addition to any other authority, a State may exclude any individual or entity for purposes of participating under the MediGrant plan for any reason for which the Secretary could exclude the individual or entity from participation in a program under title XVIII or under section 1128, 1128A, or 1866(b)(2).

(4) NOTICE.—The MediGrant plan shall provide that whenever a provider of services or any other person is terminated, suspended, or otherwise sanctioned or prohibited from participating under the plan, the State agency responsible for administering the plan shall promptly notify the Secretary and, in the case of a physician, the State medical licensing board of such action.

(5) ACCESS TO INFORMATION.—The MediGrant plan shall provide that the State will provide information and access to certain information respecting sanctions taken against health care practitioners and providers by State licensing authorities in accordance with section 2133.

SEC. 2133. INFORMATION CONCERNING SANCTIONS TAKEN BY STATE LICENSING AUTHORITIES AGAINST HEALTH CARE PRACTITIONERS AND PROVIDERS.

(a) INFORMATION REPORTING REQUIREMENT.—The requirement referred to in section 2132(b)(5) is that the State must provide for the following:

(1) INFORMATION REPORTING SYSTEM.—The State must have in effect a system of reporting the following information with respect to formal proceedings (as defined by the Secretary in regulations) concluded against a health care practitioner or entity by any authority of the State (or of a political subdivision thereof) responsible for the licensing of health care practitioners (or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners) or entities:

(A) Any adverse action taken by such licensing authority as a result of the proceeding, including any revocation or suspension of a license (and the length of any such suspension), reprimand, censure, or probation.

(B) Any dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction.

(C) Any other loss of the license of the practitioner or entity, whether by operation of law, voluntary surrender, or otherwise.

(D) Any negative action or finding by such authority, organization, or entity regarding the practitioner or entity.

(2) ACCESS TO DOCUMENTS.—The State must provide the Secretary (or an entity designated by the Secretary) with access to such documents of the authority described in paragraph (1) as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations described in such paragraph for the purpose of carrying out this Act.

(b) FORM OF INFORMATION.—The information described in subsection (a)(1) shall be provided to the Secretary (or to an appropriate private or public agency, under suitable arrangements made by the Secretary with respect to receipt, storage, protection of confidentiality, and dissemination of information) in such a form and manner as the Secretary determines to be appropriate in order to provide for activities of the Secretary under this Act and in order to provide, directly or through suitable arrangements made by the Secretary, information—

(1) to agencies administering Federal health care programs, including private entities administering such programs under contract,

(2) to licensing authorities described in subsection (a)(1),

(3) to State agencies administering or supervising the administration of State health care programs (as defined in section 1128(h)),

(4) to utilization and quality control peer review organizations described in part B of title XI and to appropriate entities with contracts under section 1154(a)(4)(C) with respect to eligible organizations reviewed under the contracts,

(5) to State MediGrant fraud control units (as defined in section 2134),

(6) to hospitals and other health care entities (as defined in section 431 of the Health Care Quality Improvement Act of 1986), with respect to physicians or other licensed health care practitioners that have entered (or may be entering) into an employment or affiliation relationship with, or have applied for clinical privileges or appointments to the medical staff of, such hospitals or other health care entities (and such information shall be deemed to be disclosed pursuant to section 427 of, and be subject to the provisions of, that Act),

(7) to the Attorney General and such other law enforcement officials as the Secretary deems appropriate, and

(8) upon request, to the Comptroller General,

in order for such authorities to determine the fitness of individuals to provide health care services, to protect the health and safety of individuals receiving health care through such programs, and to protect the fiscal integrity of such programs.

(c) CONFIDENTIALITY OF INFORMATION PROVIDED.—The Secretary shall provide for suitable safeguards for the confidentiality of the information furnished under subsection (a). Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure.

(d) APPROPRIATE COORDINATION.—The Secretary shall provide for the maximum appropriate coordination in the implementation of subsection (a) of this section and section 422 of the Health Care Quality Improvement Act of 1986.

SEC. 2134. STATE MEDIGRANT FRAUD CONTROL UNITS.

(a) IN GENERAL.—Each MediGrant plan shall provide for a State MediGrant fraud control unit described in subsection (b) that effectively carries out the functions and requirements described in such subsection, unless the State demonstrates to the satisfaction of the Secretary that the effective operation of such a unit in the State would not be cost-effective because minimal fraud exists in connection with the provision of covered services to eligible individuals under the plan, and that beneficiaries under the plan will be protected from abuse and neglect in connection with the provision of medical assistance under the plan without the existence of such a unit.

(b) UNITS DESCRIBED.—For purposes of this subsection, the term "State MediGrant fraud control unit" means a single identifiable entity of the State government which meets the following requirements:

(1) ORGANIZATION.—The entity—

(A) is a unit of the office of the State Attorney General or of another department of State government which possesses statewide authority to prosecute individuals for criminal violations;

(B) is in a State the constitution of which does not provide for the criminal prosecution of individuals by a statewide authority and has formal procedures that—

(i) assure its referral of suspected criminal violations relating to the program under this title to the appro-

priate authority or authorities in the State for prosecution, and

(ii) assure its assistance of, and coordination with, such authority or authorities in such prosecutions; or

(C) has a formal working relationship with the office of the State Attorney General and has formal procedures (including procedures for its referral of suspected criminal violations to such office) which provide effective coordination of activities between the entity and such office with respect to the detection, investigation, and prosecution of suspected criminal violations relating to the program under this title.

(2) INDEPENDENCE.—The entity is separate and distinct from any State agency that has principal responsibilities for administering or supervising the administration of the MediGrant plan.

(3) FUNCTION.—The entity's function is conducting a statewide program for the investigation and prosecution of violations of all applicable State laws regarding any and all aspects of fraud in connection with any aspect of the provision of medical assistance and the activities of providers of such assistance under the MediGrant plan.

(4) REVIEW OF COMPLAINTS.—The entity has procedures for reviewing complaints of the abuse and neglect of patients of health care facilities which receive payments under the MediGrant plan under this title, and, where appropriate, for acting upon such complaints under the criminal laws of the State or for referring them to other State agencies for action.

(5) OVERPAYMENTS.—The entity provides for the collection, or referral for collection to a single State agency, of overpayments that are made under the MediGrant plan to health care providers and that are discovered by the entity in carrying out its activities.

(6) PERSONNEL.—The entity employs such auditors, attorneys, investigators, and other necessary personnel and is organized in such a manner as is necessary to promote the effective and efficient conduct of the entity's activities.

SEC. 2135. RECOVERIES FROM THIRD PARTIES AND OTHERS.

(a) THIRD PARTY LIABILITY.—Each MediGrant plan shall provide for reasonable steps—

(1) to ascertain the legal liability of third parties to pay for care and services available under the plan, including the collection of sufficient information to enable States to pursue claims against third parties; and

(2) to seek reimbursement for medical assistance provided to the extent legal liability is establish where the amount expected to be recovered exceeds the costs of the recovery.

(b) BENEFICIARY PROTECTION.—

(1) IN GENERAL.—Each MediGrant plan shall provide that in the case of a person furnishing services under the plan for which a third party may be liable for payment—

(A) the person may not seek to collect from the individual (or financially responsible relative) payment of an amount for the service more than could be collected under the plan in the absence of such third party liability, and

(B) may not refuse to furnish services to such an individual because of a third party's potential liability for payment for the service.

(2) PENALTY.—A MediGrant plan may provide for a reduction of any payment amount otherwise due with respect to a person who furnishes services under the plan in an amount equal to up to three times the amount of any payment sought to be collected by that person in violation of paragraph (1)(A).

(c) GENERAL LIABILITY.—The State shall prohibit any health insurer (including a group health plan as defined in section 607 of the Employee Retirement Income Security Act of 1974, a service benefit plan, or a health maintenance organization), in enrolling an individual or in making any payments for benefits to the individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance under a MediGrant plan for any State.

(d) ACQUISITION OF RIGHTS OF BENEFICIARIES.—To the extent that payment has been made under a MediGrant plan in any case where a third party has a legal liability to make payment for such assistance, the State shall have in effect laws under which, to the extent that payment has been made under the plan for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services.

(e) ASSIGNMENT OF MEDICAL SUPPORT RIGHTS.—The MediGrant plan shall provide for mandatory assignment of rights of payment for medical support and other medical care owed to recipients in accordance with section 2136.

(f) REQUIRED LAWS RELATING TO MEDICAL CHILD SUPPORT.—

(1) IN GENERAL.—Each State with a MediGrant plan shall have in effect the following laws:

(A) A law that prohibits an insurer from denying enrollment of a child under the health coverage of the child's parent on the ground that—

(i) the child was born out of wedlock,

(ii) the child is not claimed as a dependent on the parent's Federal income tax return, or

(iii) the child does not reside with the parent or in the insurer's service area.

(B) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an insurer, a law that requires such insurer—

(i) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

(ii) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this title or part D of title IV; and

(iii) not to disenroll (or eliminate coverage of) such a child unless the insurer is provided satisfactory written evidence that—

(I) such court or administrative order is no longer in effect, or

(II) the child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of such disenrollment.

(C) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an employer doing business in the State, a law that requires such employer—

(i) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

(ii) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this title or part D of title IV; and

(iii) not to disenroll (or eliminate coverage of) any such child unless—

(I) the employer is provided satisfactory written evidence that such court or administrative order is no longer in effect, or the child is or will be enrolled in comparable health coverage which will take effect not later than the effective date of such disenrollment, or

(II) the employer has eliminated family health coverage for all of its employees; and

(iv) to withhold from such employee's compensation the employee's share (if any) of premiums for health coverage (except that the amount so withheld may not exceed the maximum amount permitted to be withheld under section 303(b) of the Consumer Credit Protection Act), and to pay such share of premiums to the insurer, except that the Secretary may provide by regulation for appropriate circumstances under which an employer may withhold less than such employee's share of such premiums.

(D) A law that prohibits an insurer from imposing requirements on a State agency, which has been assigned the rights of an individual eligible for medical assistance under this title and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

(E) A law that requires an insurer, in any case in which a child has health coverage through the insurer of a noncustodial parent—

(i) to provide such information to the custodial parent as may be necessary for the child to obtain benefits through such coverage;

(ii) to permit the custodial parent (or provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent; and

(iii) to make payment on claims submitted in accordance with clause (ii) directly to such custodial parent, the provider, or the State agency.

(F) A law that permits the State agency under this title to garnish the wages, salary, or other employment income of, and requires withholding amounts from State tax refunds to, any person who—

(i) is required by court or administrative order to provide coverage of the costs of health services to a child who is eligible for medical assistance under this title,

(ii) has received payment from a third party for the costs of such services to such child, but

(iii) has not used such payments to reimburse, as appropriate, either the other parent or guardian of such child or the provider of such services,

to the extent necessary to reimburse the State agency for expenditures for such costs under its plan under this title, but any claims for current or past-due child support shall take priority over any such claims for the costs of such services.

(2) DEFINITION.—For purposes of this subsection, the term "insurer" includes a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, a health maintenance organization, and an entity offering a service benefit plan.

(g) ESTATE RECOVERIES AND LIENS PERMITTED.—A State may take such actions as it considers appropriate to adjust or recover from the individual or the individual's estate any amounts paid as medical assistance to or on behalf of the individual under the MediGrant plan, including through the imposition of liens against the property or estate of the individual.

SEC. 2136. ASSIGNMENT OF RIGHTS OF PAYMENT.

(a) IN GENERAL.—For the purpose of assisting in the collection of medical support payments and other payments for medical care owed to recipients of medical assistance under the MediGrant plan, each MediGrant plan shall—

(1) provide that, as a condition of eligibility for medical assistance under the plan to an individual who has the legal capacity to execute an assignment for himself, the individual is required—

(A) to assign the State any rights, of the individual or of any other person who is eligible for medical assistance under the plan and on whose behalf the individual has the legal authority to execute an assignment of such rights, to support (specified as support for the purpose of medical care by a court or administrative order) and to payment for medical care from any third party,

(B) to cooperate with the State (i) in establishing the paternity of such person (referred to in subparagraph (A)) if the person is a child born out of wedlock, and (ii) in obtaining support and payments (described in subparagraph (A)) for himself and for such person, unless (in either case) the individual is pregnant woman or the individual is found to have good cause for refusing to cooperate as determined by the State, and

(C) to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the plan, unless such individual has good cause for refusing to cooperate as determined by the State; and

(2) provide for entering into cooperative arrangements (including financial arrangements), with any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, with a State's agency established or designated under section 454(3)) and with appropriate courts and law enforcement officials, to assist the agency or agencies administering the plan with respect to—

(A) the enforcement and collection of rights to support or payment assigned under this section, and

(B) any other matters of common concern.

(b) USE OF AMOUNTS COLLECTED.—Such part of any amount collected by the State under an assignment made under the provisions of this section shall be retained by the State as is necessary to reimburse it for medical assistance payments made on behalf of an individual with respect to whom such assignment was executed (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing of such medical assistance), and the remainder of such amount collected shall be paid to such individual.

SEC. 2137. QUALITY ASSURANCE STANDARDS FOR NURSING FACILITIES.

(a) STANDARDS FOR AND CERTIFICATION OF CERTAIN FACILITIES.—

(1) STANDARDS FOR FACILITIES.—

(A) IN GENERAL.—Each MediGrant plan shall provide for the establishment and maintenance of standards consistent with the contents described in subparagraph (B) for nursing facilities which furnish services under the plan.

(B) CONTENTS OF STANDARDS.—The standards established for facilities under this paragraph shall contain provisions relating to the following items:

(i) The treatment of resident medical records.

(ii) Policies, procedures, and bylaws for operation.

(iii) Quality assurance systems.

(iv) Resident assessment procedures, including care planning and outcome evaluation.

(vi) The assurance of a safe and adequate physical plant for the facility.

(vii) Qualifications for staff sufficient to provide adequate care, as defined by the State.

(viii) Utilization review.

(ix) The protection and enforcement of resident rights described in subparagraph (C).

(C) RESIDENT RIGHTS DESCRIBED.—The resident rights described in this subparagraph are the rights of residents to the following:

(i) To exercise the individual's rights as a resident of the facility and as a citizen or resident of the United States.

(ii) To receive notice of rights and services.

(iii) To be protected against the misuse of resident funds.

(iv) To be provided privacy and confidentiality.

(v) To voice grievances.

(vi) To examine the results of State certification program inspections.

(vii) To refuse to perform services for the facility.

(viii) To be provided privacy in communications and to receive mail.

(ix) To have the facility provide immediate access to any resident by any representative of the certification program, the resident's individual physician, the State long term care ombudsman, and any person the resident has designated as a visitor.

(x) To retain and use personal property.

(xi) To be free from abuse, including verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

(xii) To be provided with prior written notice of a pending transfer or discharge.

(D) PROCESS FOR ESTABLISHMENT.—The standards established by the State for facilities under this paragraph shall be promulgated either through the State's legislative, regulatory, or other process, and may only take effect after the State has provided the public with notice and an opportunity for comment.

(2) CERTIFICATION PROGRAM.—

(A) IN GENERAL.—Each MediGrant plan shall provide for the establishment and operation of a program consistent with the requirements of subparagraph (B) for the certification of nursing facilities which meet the standards established under paragraph (1) and the decertification of facilities which fail to meet such standards.

(B) REQUIREMENTS FOR PROGRAM.—In addition to any other requirements the State may impose, in establishing and operating the certification program under subparagraph (A), the State shall ensure the following:

(i) The State shall ensure public access (as defined by the State) to the certification program's evaluations of participating facilities, including compliance records and enforcement actions and other reports by the State regarding the ownership, compliance histories, and services provided by certified facilities.

(ii) Not less often than every 4 years, the State shall audit its expenditures under the program, through an entity designated by the State which is not affiliated with the program, as designated by the State.

(b) INTERMEDIATE SANCTION AUTHORITY.—

(1) AUTHORITY.—In addition to any other authority under State law, where a State determines that a nursing facility which is certified for participation under the MediGrant plan no longer substantially meets the requirements for such a facility under this title and further determines that the facility's deficiencies—

(A) immediately jeopardize the health and safety of its residents, the State shall at least provide for the termination of the facility's certification for participation under the plan, or

(B) do not immediately jeopardize the health and safety of its residents, the State may, in lieu of providing for terminating the facility's certification for participation under the plan, provide lesser sanctions including one that provides that no payment will be made under the plan with respect to any individual admitted to such facility after a date specified by the State.

(2) NOTICE.—The State shall not make such a decision with respect to a facility until the facility has had a reasonable opportunity, following the initial determination that it no longer substantially meets the requirements for such a facility under the plan, to correct its deficiencies, and, following this period, has been given reasonable notice and opportunity for a hearing.

(3) EFFECTIVENESS.—The State's decision to deny payment may be made effective only after such notice to the public and to the facility as may be provided for by the State, and its effectiveness shall terminate (A) when the State finds that the facility is in substantial compliance (or is making good faith efforts to achieve substantial compliance) with the requirements for such a facility under this title, or (B) in the case described in paragraph (1)(B), with the end of the eleventh month following the month such decision is made effective, whichever occurs first. If a facility to which clause (B) of the previous sentence applies still fails to substantially meet the provisions of the respective section on the date specified in such clause, the State shall terminate such facility's certification for participation under the MediGrant plan effective with the first day of the first month following the month specified in such clause.

SEC. 2138. OTHER PROVISIONS PROMOTING PROGRAM INTEGRITY.

(a) PUBLIC ACCESS TO SURVEY RESULTS.—Each MediGrant plan shall provide that upon completion of a survey of any health care facility or organization by a State agency to carry out the plan, the agency shall make public in readily available form and place the pertinent findings of the survey relating to the compliance of the facility or organization with requirements of law.

(b) RECORD KEEPING.—Each MediGrant plan shall provide for agreements with persons or institutions providing services under the plan under which the person or institution agrees—

(1) to keep such records (including ledgers, books, and original evidence of costs) as are necessary to fully disclose the extent of the services provided to individuals receiving assistance under the plan; and

(2) to furnish the State agency with such information regarding any payments claimed by such person or institution for providing services under the plan, as the State agency may from time to time request.

PART E—ESTABLISHMENT AND AMENDMENT OF MEDIGRANT PLANS

SEC. 2151. SUBMITTAL AND APPROVAL OF MEDIGRANT PLANS.

(a) SUBMITTAL.—As a condition of receiving funding under part C, each State shall submit to the Secretary a MediGrant plan that meets the applicable requirements of this title.

(b) APPROVAL.—Except as the Secretary may provide under section 2154, a MediGrant plan submitted under subsection (a)—

(1) shall be approved for purposes of this title, and

(2) shall be effective beginning with a calendar quarter that is specified in the plan, but in no case earlier than the first calendar quarter that begins at least 60 days after the date the plan is submitted.

(c) APPROVAL OF LEGISLATURE FOR SUBMITTAL.—In the case of a State which has a State allotment under section 2121(c)(1) for fiscal year 1996 of more than $10 billion, the State may not submit a MediGrant plan under this section unless the State legislature, by law, has specifically authorized such submittal.

SEC. 2152. SUBMITTAL AND APPROVAL OF PLAN AMENDMENTS.

(a) SUBMITTAL OF AMENDMENTS.—A State may amend, in whole or in part, its MediGrant plan at any time through transmittal of a plan amendment under this section.

(b) APPROVAL.—Except as the Secretary may provide under section 2154, an amendment to a MediGrant plan submitted under subsection (a)—

(1) shall be approved for purposes of this title, and

(2) shall be effective as provided in subsection (c).

(c) EFFECTIVE DATES FOR AMENDMENTS.—

(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, an amendment to MediGrant plan shall take effect on one or more effective dates specified in the amendment.

(2) AMENDMENTS RELATING TO ELIGIBILITY OR BENEFITS.—Except as provided in paragraph (4)—

(A) NOTICE REQUIREMENT.—Any plan amendment that eliminates or restricts eligibility or benefits under the plan may not take effect unless the State certifies that it has provided prior or contemporaneous public notice of the change, in a form and manner provided under applicable State law.

(B) TIMELY TRANSMITTAL.—Any plan amendment that eliminates or restricts eligibility or benefits under the plan shall not be effective for longer than a 60 day period unless the amendment has been transmitted to the Secretary before the end of such period.

(3) OTHER AMENDMENTS.—Subject to paragraph (4), any plan amendment that is not described in paragraph (2) becomes effective in a State fiscal year may not remain in effect after the end of such fiscal year (or, if later, the end of the 90-day period on which it becomes effective) unless the amendment has been transmitted to the Secretary.

(4) EXCEPTION.—The requirements of paragraphs (2) and (3) shall not apply to a plan amendment that is submitted on a timely basis pursuant to a court order or an order of the Secretary.

SEC. 2153. PROCESS FOR STATE WITHDRAWAL FROM PROGRAM.

(a) IN GENERAL.—A State may rescind its MediGrant plan and discontinue participation in the program under this title at any time after providing—

(1) the public with 90 days prior notice in a publication in one or more daily newspapers of general circulation in the State or in any publication used by the State to publish State statutes or rules, and

(2) the Secretary with 90 days prior written notice.

(b) EFFECTIVE DATE.—Such discontinuation shall not apply to payments under part C for expenditures made for items and services furnished under the MediGrant plan before the effective date of the discontinuation.

(c) PRORATION OF ALLOTMENTS.—In the case of any withdrawal under this section other than at the end of a Federal fiscal year, notwithstanding any provision of section 2121 to the contrary, the Secretary shall provide for such appropriate proration of the application of allotments under section 2121 as is appropriate.

SEC. 2154. SANCTIONS FOR SUBSTANTIAL NONCOMPLIANCE.

(a) PROMPT REVIEW OF PLAN SUBMITTALS.—The Secretary shall promptly review MediGrant plans and plan amendments submitted under this part to determine if they substantially comply with the requirements of this title.

(b) DETERMINATIONS OF SUBSTANTIAL NONCOMPLIANCE.—

(1) AT TIME OF PLAN OR AMENDMENT SUBMITTAL.—

(A) IN GENERAL.—If the Secretary, during the 30-day period beginning on the date of submittal of a MediGrant plan or plan amendment—

(i) determines that the plan or amendment substantially violates (within the meaning of subsection (c)) a requirement of this title, and

(ii) provides written notice of such determination to the State,

the Secretary shall issue an order specifying that the plan or amendment, insofar as it is in substantial violation of such a requirement, shall not be effective, except as provided in subsection (c), beginning at the end of a period of not less than 30 days, or 120 days in the case of the initial submission of the MediGrant plan) specified in the order beginning on the date of the notice of the determination.

(B) EXTENSION OF TIME PERIODS.—The time periods specified in subparagraph (A) may be extended by written agreement of the Secretary and the State involved.

(2) VIOLATIONS IN ADMINISTRATION OF PLAN.—

(A) IN GENERAL.—If the Secretary determines, after reasonable notice and opportunity for a hearing for the State, that in the administration of a MediGrant plan there is a substantial violation of a requirement of this title, the Secretary shall provide the State with written notice of the determination and with an order to remedy such violation. Such an order shall become effective prospectively, as specified in the order, after the date of receipt of such written notice. Such an order may include the withholding of funds, consistent with subsection (f), for parts of the MediGrant plan affected by such violation, until the Secretary is satisfied that the violation has been corrected.

(B) EFFECTIVENESS.—If the Secretary issues an order under paragraph (1), the order shall become effective, except as provided in subsection (c), beginning at the end of a period (of not less than 30 days) specified in the order beginning on the date of the notice of the determination to the State.

(C) TIMELINESS OF DETERMINATIONS RELATING TO REPORT-BASED COMPLIANCE.—The Secretary shall make determinations under this paragraph respecting violations relating to information contained in an annual report under section 2102, an independent evaluation under section 2103, or an audit report under section 2131 not later than 30 days after the date of transmittal of the report or evaluation to the Secretary.

(3) CONSULTATION WITH STATE.—Before making a determination adverse to a State under this section, the Secretary shall (within any time periods provided under this section)—

(A) reasonably consult with the State involved,

(B) offer the State a reasonable opportunity to clarify the submission and submit further information to substantiate compliance with the requirements of this title, and

(C) reasonably consider any such clarifications and information submitted.

(4) JUSTIFICATION OF ANY INCONSISTENCIES IN DETERMINATIONS.—If the Secretary makes a determination under this section that is, in whole or in part, inconsistent with any previous determination issued by the Secretary under this title, the Secretary shall include in the determination a detailed explanation and justification for any such difference.

(5) SUBSTANTIAL VIOLATION DEFINED.—For purposes of this title, a MediGrant plan (or amendment to such a plan) or the administration of the MediGrant plan is considered to "substantially violate" a requirement of this title if a provision of the plan or amendment (or an omission from the plan or amendment) or the administration of the plan—

(A) is material and substantial in nature and effect, and

(B) is inconsistent with an express requirement of this title.

A failure to meet a strategic objective or performance goal (as described in section 2101) shall not be considered to substantially violate a requirement of this title.

(c) STATE RESPONSE TO ORDERS.—

(1) STATE RESPONSE BY REVISING PLAN.—

(A) IN GENERAL.—Insofar as an order under subsection (b)(1) relates to a substantial violation by a MediGrant plan or plan amendment, a State may respond (before the date the order becomes effective) to such an order by submitting a written revision of the plan or plan amendment to substantially comply with the requirements of this part.

(B) REVIEW OF REVISION.—In the case of submission of such a revision, the Secretary shall promptly review the submission and shall withhold any action on the order during the period of such review.

(C) SECRETARIAL RESPONSE.—The revision shall be considered to have corrected the deficiency (and the order rescinded insofar as it relates to such deficiency) unless the Secretary determines and notifies the State in writing, within 15 days after the date the Secretary receives the revision, that the plan or amendment, as proposed to be revised, still substantially violates a requirement of this title. In such case the State may respond by seeking reconsideration or a hearing under paragraph (2).

(D) REVISION RETROACTIVE.—If the revision provides for substantial compliance, the revision may be treated, at the option of the State, as being effective either as of the effective date of the provision to which it relates or such later date as the State and Secretary may agree.

(2) STATE RESPONSE BY SEEKING RECONSIDERATION OR AN ADMINISTRATIVE HEARING.—A State may respond to an order under subsection (b) by filing a request with the Secretary for—

(A) a reconsideration of the determination, pursuant to subsection (d)(1), or

(B) a review of the determination through an administrative hearing, pursuant to subsection (d)(2).

In such case, the order shall not take effect before the completion of the reconsideration or hearing.

(3) STATE RESPONSE BY CORRECTIVE ACTION PLAN.—

(A) IN GENERAL.—In the case of an order described in subsection (b)(2) that relates to a substantial violation in the administration of the MediGrant plan, a State may respond to such an order by submitting a corrective action plan with the Secretary to correct deficiencies in the administration of the plan which are the subject of the order.

(B) REVIEW OF CORRECTIVE ACTION PLAN.—In such case, the Secretary shall withhold any action on the order for a period (not to exceed 30 days) during which the Secretary reviews the corrective action plan.

(C) SECRETARIAL RESPONSE.—The corrective action plan shall be considered to have corrected the deficiency (and the order rescinded insofar as it relates to such deficiency) unless the Secretary determines and notifies the State in writing, within 15 days after the date the Secretary receives the corrective action plan, that the State's administration of the MediGrant plan, as proposed to be corrected in the plan, will still substantially violate a requirement of this title. In

such case the State may respond by seeking reconsideration or a hearing under paragraph (2).

(4) STATE RESPONSE BY WITHDRAWAL OF PLAN AMENDMENT; FAILURE TO RESPOND.—Insofar as an order relates to a substantial violation in a plan amendment submitted, a State may respond to such an order by withdrawing the plan amendment and the MediGrant plan shall be treated as though the amendment had not been made.

(d) ADMINISTRATIVE REVIEW AND HEARING.—

(1) RECONSIDERATION.—Within 30 days after the date of receipt of a request under subsection (b)(2)(A), the Secretary shall notify the State of the time and place at which a hearing will be held for the purpose of reconsidering the Secretary's determination. The hearing shall be held not less than 20 days nor more than 60 days after the date notice of the hearing is furnished to the State, unless the Secretary and the State agree in writing to holding the hearing at another time. The Secretary shall affirm, modify, or reverse the original determination within 60 days of the conclusion of the hearing.

(2) ADMINISTRATIVE HEARING.—Within 30 days after the date of receipt of a request under subsection (b)(2)(B), an administrative law judge shall schedule a hearing for the purpose of reviewing the Secretary's determination. The hearing shall be held not less than 20 days nor more than 60 days after the date notice of the hearing is furnished to the State, unless the Secretary and the State agree in writing to holding the hearing at another time. The administrative law judge shall affirm, modify, or reverse the determination within 60 days of the conclusion of the hearing.

(e) JUDICIAL REVIEW.—

(1) IN GENERAL.—A State which is dissatisfied with a final determination made by the Secretary under subsection (d)(1) or a final determination of an administrative law judge under subsection (d)(2) may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which the State is located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary and, in the case of a determination under subsection (d)(2), to the administrative law judge involved. The Secretary (or judge involved) thereupon shall file in the court the record of the proceedings on which the final determination was based, as provided in section 2112 of title 28, United States Code.

(2) STANDARD FOR REVIEW.—The findings of fact by the Secretary or administrative law judge, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary or judge to take further evidence, and the Secretary or judge may thereupon make new or modified findings of fact and may modify a previous determination, and shall certify to the court the transcript and record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) JURISDICTION OF APPELLATE COURT.—The court shall have jurisdiction to affirm the action of the Secretary or judge or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(f) WITHHOLDING OF FUNDS.—

(1) IN GENERAL.—Any order under this section relating to the withholding of funds shall be effective not earlier than the effective date of the order and shall only relate to the portions of a MediGrant plan or administration thereof which substantially violate a requirement of this title. In the case of a failure to meet a set-aside requirement under section 2112, any withholding shall only apply to the extent of such failure.

(2) SUSPENSION OF WITHHOLDING.—The Secretary may suspend withholding of funds under paragraph (1) during the period reconsideration or administrative and judicial review is pending under subsection (d) or (e).

(3) RESTORATION OF FUNDS.—Any funds withheld under this subsection under an order shall be immediately restored to a State—

(A) to the extent and at the time the order is—

(i) modified or withdrawn by the Secretary upon reconsideration,

(ii) modified or reversed by an administrative law judge, or

(iii) set aside (in whole or in part) by an appellate court; or

(B) when the Secretary determines that the deficiency which was the basis for the order is corrected;

(C) when the Secretary determines that violation which was the basis for the order is resolved or the amendment which was the basis for the order is withdrawn; or

(D) at any time upon the initiative of the Secretary.

SEC. 2155. SECRETARIAL AUTHORITY.

(a) NEGOTIATED AGREEMENT AND DISPUTE RESOLUTION.—

(1) NEGOTIATIONS.—Nothing in this part shall be construed as preventing the Secretary and a State from at any time negotiating a satisfactory resolution to any dispute concerning the approval of a MediGrant plan (or amendments to a MediGrant plan) or the compliance of a MediGrant plan (including its administration) with requirements of this title.

(2) COOPERATION.—The Secretary shall act in a cooperative manner with the States in carrying out this title. In the event of a dispute between a State and the Secretary, the Secretary shall, whenever practicable, engage in informal dispute resolution activities in lieu of formal enforcement or sanctions under section 2154.

(b) LIMITATIONS ON DELEGATION OF DECISION-MAKING AUTHORITY.—The Secretary may not delegate (other than to the Administrator of the Health Care Financing Administration) the authority to make determinations or reconsiderations respecting the approval of MediGrant plans (or amendments to such plans) or the compliance of a MediGrant plan (including its administration) with re-

quirements of this title. Such Administrator may not further delegate such authority to any individual, including any regional official of such Administration.

(c) REQUIRING FORMAL RULEMAKING FOR CHANGES IN SECRETARIAL ADMINISTRATION.—The Secretary shall carry out the administration of the program under this title only through a prospective formal rulemaking process, including issuing notices of proposed rule making, publishing proposed rules or modifications to rules in the Federal Register, and soliciting public comment.

PART F—GENERAL PROVISIONS

SEC. 2171. DEFINITIONS.

(a) MEDICAL ASSISTANCE.—

(1) IN GENERAL.—For purposes of this title, except as provided in paragraph (2), the term "medical assistance" means payment of part or all the cost of any of the following for eligible low-income individuals (as defined in subsection (b)) as specified under the MediGrant plan:

(A) Inpatient hospital services.

(B) Outpatient hospital services.

(C) Physician services.

(D) Surgical services.

(E) Clinic services and other ambulatory health care services.

(F) Nursing facility services.

(G) Intermediate care facility services for the mentally retarded.

(H) Prescription drugs and biologicals.

(I) Over-the-counter medications.

(J) Laboratory and radiological services.

(K) Family planning services and supplies.

(L) Inpatient mental health services, including services furnished in a State-operated mental hospital and including residential or other 24-hour therapeutically planned structured services in the case of a child.

(M) Outpatient mental health services, including services furnished in a State-operated mental hospital and including community-based services in the case of a child.

(N) Durable medical equipment and other medically-related or remedial devices (such as prosthetic devices, implants, eyeglasses, hearing aids, dental devices, and adaptive devices).

(O) Disposable medical supplies.

(P) Home and community-based health care services and related supportive services (such as home health nursing services, home health aide services, personal care, assistance with activities of daily living, chore services, day care services, respite care services, and training for family members).

(Q) Community supported living arrangements.

(R) Nursing care services (such as private duty nursing care, nurse midwife services, respiratory care services, pediatric nurse services, and advanced practice nurse services) in a home, school, or other setting.

(S) Dental services.

(T) Inpatient substance abuse treatment services and residential substance abuse treatment services.

(U) Outpatient substance abuse treatment services.

(V) Case management services.

(W) Care coordination services.

(X) Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.

(Y) Hospice care.

(Z) Any other medical, diagnostic, screening, preventive, restorative, remedial, therapeutic, or rehabilitative services (whether in a facility, home, school, or other setting) if recognized by State law and if the service is—

(i) prescribed by or furnished by a physician or other licensed or registered practitioner within the scope of practice as defined by State law,

(ii) performed under the general supervision or at the direction of a physician, or

(iii) furnished by a health care facility that is operated by a State or local government or is licensed under State law and operating within the scope of the license.

(AA) Premiums for private health care insurance coverage, including private long-term care insurance coverage.

(BB) Medical transportation.

(CC) Medicare cost-sharing (as defined in subsection (c)).

(DD) Enabling services (such as transportation, translation, and outreach services) designed to increase the accessibility of primary and preventive health care services for eligible low-income individuals.

(EE) Any other health care services or items specified by the Secretary.

(2) Exclusion of certain payments.—Such term does not include the payment with respect to care or services for—

(A) any individual who is an inmate of a public institution (except as a patient in a State psychiatric hospital); and

(B) any individual who is not an eligible low-income individual.

(b) Eligible Low-Income Individual.—The term "eligible low-income individual" means an individual who has been determined eligible by the State for medical assistance under the MediGrant plan and whose family income (as determined under the plan) does not exceed a percentage (specified in the MediGrant plan and not to exceed 300 percent) of the poverty line for a family of the size involved. In determining the amount of income under the previous sentence, a State may exclude costs incurred for medical care or other types of remedial care recognized by the State.

(c) Medicare Cost-Sharing.—For purposes of this title, the term "medicare cost-sharing" means any of the following:

(1)(A) Premiums under section 1839.

(B) Premiums under section 1818 or 1818A.

(2) Coinsurance under title XVIII (including coinsurance described in section 1813).

(3) Deductibles established under title XVIII (including those described in section 1813 and section 1833(b)).

(4) The difference between the amount that is paid under section 1833(a) and the amount that would be paid under such section if any reference to "80 percent" therein were deemed a reference to "100 percent".

(5) Premiums for enrollment of an individual with an eligible organization under section 1876 or with a MedicarePlus organization under part C of title XVIII.

(d) ADDITIONAL DEFINITIONS.—For purposes of this title:

(1) CHILD.—The term "child" means an individual under 19 years of age.

(2) POVERTY LINE DEFINED.—The term "poverty line" means the income official poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981).

(3) PREGNANT WOMAN.—The term "pregnant woman" includes a woman during the 60-day period beginning on the last day of the pregnancy.

SEC. 2172. TREATMENT OF TERRITORIES.

Notwithstanding any other requirement of this title, the Secretary may waive or modify any requirement of this title with respect to the medical assistance program a State other than the 50 States and the District of Columbia, other than a waiver of—

(1) the applicable Federal medical assistance percentage,

(2) the limitation on total payments in a fiscal year to the amount of the allotment under section 2121(c), or

(3) the requirement that payment may be made for medical assistance only with respect to amounts expended by the State for care and services described in paragraph (1) of section 2171(a) and medically-related services (as defined in section 2112(e)(2)).

SEC. 2173. DESCRIPTION OF TREATMENT OF INDIAN HEALTH SERVICE FACILITIES.

In the case of a State in which one or more facilities of the Indian Health Service are located, the MediGrant plan shall include a description of—

(1) what provision (if any) has been made for payment for items and services furnished by such facilities, and

(2) the manner in which medical assistance for low-income eligible individuals who are Indians will be provided, as determined by the State in consultation with the appropriate Indian tribes and tribal organizations.

SEC. 2174. APPLICATION OF CERTAIN GENERAL PROVISIONS.

The following sections in part A of title XI shall apply to States under this title in the same manner as they applied to a State under title XIX:

(1) Section 1101(a)(1) (relating to definition of State).

(2) Section 1116 (relating to administrative and judicial review), but only insofar as consistent with the provisions of part C.

(3) Section 1124 (relating to disclosure of ownership and related information).

(4) Section 1126 (relating to disclosure of information about certain convicted individuals).

(5) Section 1132 (relating to periods within which claims must be filed).

SEC. 2175. MEDIGRANT MASTER DRUG REBATE AGREEMENTS.

(a) REQUIREMENT FOR MANUFACTURER TO ENTER INTO AGREEMENT.—

(1) IN GENERAL.—Pursuant to section 2123(f), in order for payment to be made to a State under part C for medical assistance for covered outpatient drugs of a manufacturer, the manufacturer shall enter into and have in effect a MediGrant master rebate agreement described in subsection (b) with the Secretary on behalf of States electing to participate in the agreement.

(2) STATE PARTICIPATION IN MASTER AGREEMENT OPTIONAL.—Nothing in this section shall be construed to—

(A) require a State to participate in a MediGrant master rebate agreement under this section; or

(B) prohibit a State from entering into an agreement with a manufacturer of covered outpatient drugs (under such terms as the State and manufacturer may agree upon) regarding the amount of payment for such drugs under the MediGrant plan.

(3) COVERAGE OF DRUGS NOT COVERED UNDER REBATE AGREEMENTS.—Nothing in this section shall be construed to prohibit a State in its discretion from providing coverage under its MediGrant plan of a covered outpatient drug for which no rebate agreement is in effect under this section.

(4) EFFECT ON EXISTING AGREEMENTS.—If a State has a rebate agreement in effect with a manufacturer on the date of the enactment of this section which provides for a minimum aggregate rebate equal to or greater than the minimum aggregate rebate which would otherwise be paid under the MediGrant master agreement under this section, at the option of the State—

(A) such agreement shall be considered to meet the requirements of the MediGrant master rebate agreement; and

(B) the State shall be considered to have elected to participate in the MediGrant master rebate agreement.

(b) TERMS OF REBATE AGREEMENT.—

(1) PERIODIC REBATES.—The MediGrant master rebate agreement under this section shall require the manufacturer to provide, to the MediGrant plan of each State participating in the agreement, a rebate for a rebate period in an amount specified in subsection (c) for covered outpatient drugs of the manufacturer dispensed after the effective date of the agreement, for which payment was made under the plan for such period. Such rebate shall be paid by the manufacturer not later than 30 days after the date of receipt of the information described in paragraph (2) for the period involved.

(2) STATE PROVISION OF INFORMATION.—

(A) STATE RESPONSIBILITY.—Each State participating in the MediGrant master rebate agreement shall report to each manufacturer not later than 60 days after the end of each rebate period and in a form consistent with a standard reporting format established by the Secretary, information on the total number of units of each dosage form and strength and package size of each covered outpatient drug, for which payment was made under the MediGrant plan for the period, and shall promptly transmit a copy of such report to the Secretary.

(B) AUDITS.—A manufacturer may audit the information provided (or required to be provided) under subparagraph (A). Adjustments to rebates shall be made to the extent that information indicates that utilization was greater or less than the amount previously specified.

(3) MANUFACTURER PROVISION OF PRICE INFORMATION.—

(A) IN GENERAL.—Each manufacturer which is subject to the MediGrant master rebate agreement under this section shall report to the Secretary—

(i) not later than 30 days after the last day of each rebate period under the agreement (beginning on or after January 1, 1991), on the average manufacturer price (as defined in subsection (i)(1)) and, for single source drugs and innovator multiple source drugs, the manufacturer's best price (as defined in subsection (c)(1)(C)) for each covered outpatient drug for the rebate period under the agreement, and

(ii) not later than 30 days after the date of entering into an agreement under this section, on the average manufacturer price (as defined in subsection (i)(1)) as of October 1, 1990, for each of the manufacturer's covered outpatient drugs.

(B) VERIFICATION SURVEYS OF AVERAGE MANUFACTURER PRICE.—The Secretary may survey wholesalers and manufacturers that directly distribute their covered outpatient drugs, when necessary, to verify manufacturer prices reported under subparagraph (A). The Secretary may impose a civil monetary penalty in an amount not to exceed $10,000 on a wholesaler, manufacturer, or direct seller, if the wholesaler, manufacturer, or direct seller of a covered outpatient drug refuses a request for information by the Secretary in connection with a survey under this subparagraph. The provisions of section 1128A (other than subsections (a) (with respect to amounts of penalties or additional assessments) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

(C) PENALTIES.—

(i) FAILURE TO PROVIDE TIMELY INFORMATION.—In the case of a manufacturer which is subject to the MediGrant master rebate agreement that fails to provide information required under subparagraph (A) on a timely basis, the amount of the penalty shall be

$10,000 for each day in which such information has not been provided and such amount shall be paid to the Treasury. If such information is not reported within 90 days of the deadline imposed, the agreement shall be suspended for services furnished after the end of such 90-day period and until the date such information is reported (but in no case shall such suspension be for a period of less than 30 days).

(ii) FALSE INFORMATION.—Any manufacturer which is subject to the MediGrant master rebate agreement, or a wholesaler or direct seller, that knowingly provides false information under subparagraph (A) or (B) is subject to a civil money penalty in an amount not to exceed $100,000 for each item of false information. Any such civil money penalty shall be in addition to other penalties as may be prescribed by law. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

(D) CONFIDENTIALITY OF INFORMATION.—Notwithstanding any other provision of law, information disclosed by manufacturers or wholesalers under this paragraph or under an agreement with the Secretary of Veterans Affairs described in section 2123(f) is confidential and shall not be disclosed by the Secretary or the Secretary of Veterans Affairs or a State agency (or contractor therewith) in a form which discloses the identity of a specific manufacturer or wholesaler or the prices charged for drugs by such manufacturer or wholesaler, except—

(i) as the Secretary determines to be necessary to carry out this section,

(ii) to permit the Comptroller General to review the information provided, and

(iii) to permit the Director of the Congressional Budget Office to review the information provided.

(4) LENGTH OF AGREEMENT.—

(A) IN GENERAL.—The MediGrant master rebate agreement under this section shall be effective for an initial period of not less than 1 year and shall be automatically renewed for a period of not less than one year unless terminated under subparagraph (B).

(B) TERMINATION.—

(i) BY THE SECRETARY.—The Secretary may provide for termination of the MediGrant master rebate agreement with respect to a manufacturer for violation of the requirements of the agreement or other good cause shown. Such termination shall not be effective earlier than 60 days after the date of notice of such termination. The Secretary shall provide, upon request, a manufacturer with a hearing concerning such a termination, but such hearing shall not delay the effective date of the termination. Failure of a State to provide

any advance notice of such a termination as required by regulation shall not affect the State's right to terminate coverage of the drugs affected by such termination as of the effective date of such termination.

(ii) BY A MANUFACTURER.—A manufacturer may terminate its participation in the MediGrant master rebate agreement under this section for any reason. Any such termination shall not be effective until the calendar quarter beginning at least 60 days after the date the manufacturer provides notice to the Secretary.

(iii) EFFECTIVENESS OF TERMINATION.—Any termination under this subparagraph shall not affect rebates due under the agreement before the effective date of its termination.

(iv) NOTICE TO STATES.—In the case of a termination under this subparagraph, the Secretary shall provide notice of such termination to the States within not less than 30 days before the effective date of such termination.

(v) APPLICATION TO TERMINATIONS OF OTHER AGREEMENTS.—The provisions of this subparagraph shall apply to the terminations of master agreements described in section 8126(a) of title 38, United States Code.

(C) DELAY BEFORE REENTRY.—In the case of any rebate agreement with a manufacturer under this section which is terminated, another such agreement with the manufacturer (or a successor manufacturer) may not be entered into until a period of 1 calendar quarter has elapsed since the date of the termination, unless the Secretary finds good cause for an earlier reinstatement of such an agreement.

(c) DETERMINATION OF AMOUNT OF REBATE.—

(1) BASIC REBATE FOR SINGLE SOURCE DRUGS AND INNOVATOR MULTIPLE SOURCE DRUGS.—

(A) IN GENERAL.—Except as provided in paragraph (2), the amount of the rebate specified in this subsection with respect to a State participating in the MediGrant master rebate agreement for a rebate period (as defined in subsection (i)(8)) with respect to each dosage form and strength of a single source drug or an innovator multiple source drug shall be equal to the product of—

(i) the total number of units of each dosage form and strength paid for under the State plan in the rebate period (as reported by the State); and

(ii) the greater of—

(I) the difference between the average manufacturer price and the best price (as defined in subparagraph (C)) for the dosage form and strength of the drug, or

(II) the minimum rebate percentage (specified in subparagraph (B)) of such average manufacturer price,

for the rebate period.

(B) MINIMUM REBATE PERCENTAGE.—For purposes of subparagraph (A)(ii)(II), the "minimum rebate percentage" is 15.1 percent.

(C) BEST PRICE DEFINED.—For purposes of this section—

(i) IN GENERAL.—The term "best price" means, with respect to a single source drug or innovator multiple source drug of a manufacturer, the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States, excluding—

(I) any prices charged on or after October 1, 1992, to the Indian Health Service, the Department of Veterans Affairs, a State home receiving funds under section 1741 of title 38, United States Code, the Department of Defense, the Public Health Service, or a covered entity described in section 340B(a)(4) of the Public Health Service Act;

(II) any prices charged under the Federal Supply Schedule of the General Services Administration;

(III) any prices used under a State pharmaceutical assistance program; and

(IV) any depot prices and single award contract prices, as defined by the Secretary, of any agency of the Federal Government.

(ii) SPECIAL RULES.—The term "best price"—

(I) shall be inclusive of cash discounts, free goods that are contingent on any purchase requirement, volume discounts, and rebates (other than rebates under this section);

(II) shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package;

(III) shall not take into account prices that are merely nominal in amount; and

(IV) shall exclude rebates paid under this section or any other rebates paid to a State participating in the MediGrant master rebate agreement.

(2) ADDITIONAL REBATE FOR SINGLE SOURCE AND INNOVATOR MULTIPLE SOURCE DRUGS.—

(A) IN GENERAL.—The amount of the rebate specified in this subsection with respect to a State participating in the MediGrant master rebate agreement for a rebate period, with respect to each dosage form and strength of a single source drug or an innovator multiple source drug, shall be increased by an amount equal to the product of—

(i) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the MediGrant plan for the rebate period; and

(ii) the amount (if any) by which—

(I) the average manufacturer price for the dosage form and strength of the drug for the period, exceeds

(II) the average manufacturer price for such dosage form and strength for the calendar quarter beginning July 1, 1990 (without regard to whether or not the drug has been sold or transferred to an entity, including a division or subsidiary of the manufacturer, after the first day of such quarter), increased by the percentage by which the consumer price index for all urban consumers (United States city average) for the month before the month in which the rebate period begins exceeds such index for September 1990.

(B) TREATMENT OF SUBSEQUENTLY APPROVED DRUGS.—In the case of a covered outpatient drug approved by the Food and Drug Administration after October 1, 1990, clause (ii)(II) of subparagraph (A) shall be applied by substituting "the first full calendar quarter after the day on which the drug was first marketed" for "the calendar quarter beginning July 1, 1990" and "the month prior to the first month of the first full calendar quarter after the day on which the drug was first marketed" for "September 1990".

(3) REBATE FOR OTHER DRUGS.—

(A) IN GENERAL.—The amount of the rebate paid to a State participating in the MediGrant master rebate agreement for a rebate period with respect to each dosage form and strength of covered outpatient drugs (other than single source drugs and innovator multiple source drugs) shall be equal to the product of—

(i) the applicable percentage (as described in subparagraph (B)) of the average manufacturer price for the dosage form and strength for the rebate period, and

(ii) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the MediGrant plan for the rebate period.

(B) APPLICABLE PERCENTAGE DEFINED.—For purposes of subparagraph (A)(i), the "applicable percentage" is 11 percent.

(4) LIMITATION ON AMOUNT OF REBATE TO AMOUNTS PAID FOR CERTAIN DRUGS.—Upon request of a manufacturer of a covered outpatient drug for which a majority of the estimated number of units of such dosage form and strength that are subject to rebates under this section were dispensed to inpatients of nursing facilities (including drugs which are exempt from the requirements of the MediGrant master rebate agreement under this section under subsection (h)(1)(B)), the Secretary shall limit the amount of the rebate under this subsection with respect to a dosage form and strength of the drug for a rebate period to the amount paid under the MediGrant plan with respect to such dosage form and strength of the drug in the rebate period (without consideration of any dispensing fees paid).

(d) LIMITATIONS ON COVERAGE OF DRUGS BY STATES PARTICIPATING IN MASTER AGREEMENT.—

(1) PERMISSIBLE RESTRICTIONS.—A State participating in the MediGrant master rebate agreement under this section may—

(A) subject to prior authorization under its MediGrant plan any covered outpatient drug so long as any such prior authorization program complies with the requirements of paragraph (5); and

(B) exclude or otherwise restrict coverage under its plan of a covered outpatient drug if—

(i) the prescribed use is not for a medically accepted indication (as defined in subsection (i)(5));

(ii) the drug is contained in the list referred to in paragraph (2);

(iii) the drug is subject to such restrictions pursuant to the MediGrant master rebate agreement or any agreement described in subsection (a)(4); or

(iv) the State has excluded coverage of the drug from its formulary established in accordance with paragraph (4).

(2) LIST OF DRUGS SUBJECT TO RESTRICTION.—The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted by a State participating in the MediGrant master rebate agreement:

(A) Agents when used for anorexia, weight loss, or weight gain.

(B) Agents when used to promote fertility.

(C) Agents when used for cosmetic purposes or hair growth.

(D) Agents when used for the symptomatic relief of cough and colds.

(E) Agents when used to promote smoking cessation.

(F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

(G) Nonprescription drugs.

(H) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.

(I) Barbiturates.

(J) Benzodiazepines.

(3) ADDITIONS TO DRUG LISTINGS.—The Secretary shall, by regulation, periodically update the list of drugs or classes of drugs described in paragraph (2), or their medical uses, which the Secretary has determined to be subject to clinical abuse or inappropriate use.

(4) REQUIREMENTS FOR FORMULARIES.—A State participating in the MediGrant master rebate agreement may establish a formulary if the formulary meets the following requirements:

(A) The formulary is developed by a committee consisting of physicians, pharmacists, and other appropriate individuals appointed by the Governor of the State.

(B) Except as provided in subparagraph (C), the formulary includes the covered outpatient drugs of any manufacturer which has entered into and complies with the agreement under subsection (a) (other than any drug excluded from coverage or otherwise restricted under paragraph (2)).

(C) A covered outpatient drug may be excluded with respect to the treatment of a specific disease or condition for an identified population (if any) only if, based on the drug's labeling (or, in the case of a drug the prescribed use of which is not approved under the Federal Food, Drug, and Cosmetic Act but is a medically accepted indication, based on information from the appropriate compendia described in subsection (i)(5)), the excluded drug does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome of such treatment for such population over other drugs included in the formulary and there is a written explanation (available to the public) of the basis for the exclusion.

(D) The State plan permits coverage of a drug excluded from the formulary (other than any drug excluded from coverage or otherwise restricted under paragraph (2)) pursuant to a prior authorization program that is consistent with paragraph (5).

(E) The formulary meets such other requirements as the Secretary may impose in order to achieve program savings consistent with protecting the health of program beneficiaries.

A prior authorization program established by a State under paragraph (5) is not a formulary subject to the requirements of this paragraph.

(5) REQUIREMENTS OF PRIOR AUTHORIZATION PROGRAMS.—The MediGrant plan of a State participating in the MediGrant master rebate agreement may require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (i)(5)) only if the system providing for such approval—

(A) provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization; and

(B) except with respect to the drugs on the list referred to in paragraph (2), provides for the dispensing of at least 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

(6) OTHER PERMISSIBLE RESTRICTIONS.—A State participating in the MediGrant master rebate agreement may impose limitations, with respect to all such drugs in a therapeutic class, on the minimum or maximum quantities per prescription or on the number of refills, if such limitations are necessary to discourage waste, and may address instances of fraud or abuse by individuals in any manner authorized under this Act.

(e) DRUG USE REVIEW.—

(1) IN GENERAL.—A State participating in the MediGrant master rebate agreement may provide for a drug use review program to educate physicians and pharmacists to identify and reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists, and patients, or associated with specific drugs or

groups of drugs, as well as potential and actual severe adverse reactions to drugs.

(2) APPLICATION OF STATE STANDARDS.—A State with a drug use review program under this subsection shall establish and operate the program under such standards as it may establish.

(f) ELECTRONIC CLAIMS MANAGEMENT.—In accordance with chapter 35 of title 44, United States Code (relating to coordination of Federal information policy), the Secretary shall encourage each State to establish, as its principal means of processing claims for covered outpatient drugs under its MediGrant plan, a point-of-sale electronic claims management system, for the purpose of performing on-line, real time eligibility verifications, claims data capture, adjudication of claims, and assisting pharmacists (and other authorized persons) in applying for and receiving payment.

(g) ANNUAL REPORT.—

(1) IN GENERAL.—Not later than May 1 of each year, the Secretary shall transmit to the Committee on Finance of the Senate, the Committee on Commerce of the House of Representatives, and the Committee on Aging of the Senate a report on the operation of this section in the preceding fiscal year.

(2) DETAILS.—Each report shall include information on—

(A) ingredient costs paid under this title for single source drugs, multiple source drugs, and nonprescription covered outpatient drugs;

(B) the total value of rebates received and number of manufacturers providing such rebates;

(C) the effect of inflation on the value of rebates required under this section;

(D) trends in prices paid under this title for covered outpatient drugs; and

(E) Federal and State administrative costs associated with compliance with the provisions of this title.

(h) EXEMPTION FOR CAPITATED HEALTH CARE ORGANIZATIONS, HOSPITALS, AND NURSING FACILITIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the requirements of the MediGrant master rebate agreement under this section shall not apply with respect to covered outpatient drugs dispensed by or through—

(A) a capitated health care organization (as defined in section 2114(c)(1)); or

(B) a hospital or nursing facility that dispenses covered outpatient drugs using a drug formulary system and bills the State no more than the hospital's purchasing costs for covered outpatient drugs.

(2) CONSTRUCTION IN DETERMINING BEST PRICE.—Nothing in paragraph (1) shall be construed as excluding amounts paid by the entities described in such paragraph for covered outpatient drugs from the determination of the best price (as defined in subsection (c)(1)(C)) for such drugs.

(i) DEFINITIONS.—In the section—

(1) AVERAGE MANUFACTURER PRICE.—The term "average manufacturer price" means, with respect to a covered outpatient drug of a manufacturer for a rebate period, the average price paid to the manufacturer for the drug in the United States by

wholesalers for drugs distributed to the retail pharmacy class of trade, after deducting customary prompt pay discounts.

(2) COVERED OUTPATIENT DRUG.—Subject to the exceptions in subparagraph (D), the term "covered outpatient drug" means—

(A) of those drugs which are treated as prescribed drugs for purposes of section 2171(a)(1)(H), a drug which may be dispensed only upon prescription (except as provided in paragraph (7)), and—

(i) which is approved as a prescription drug under section 505 or 507 of the Federal Food, Drug, and Cosmetic Act;

(ii)(I) which was commercially used or sold in the United States before the date of the enactment of the Drug Amendments of 1962 or which is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) which has not been the subject of a final determination by the Secretary that it is a "new drug" (within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act) or an action brought by the Secretary under section 301, 302(a), or 304(a) of such Act to enforce section 502(f) or 505(a) of such Act; or

(iii)(I) which is described in section 107(c)(3) of the Drug Amendments of 1962 and for which the Secretary has determined there is a compelling justification for its medical need, or is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) for which the Secretary has not issued a notice of an opportunity for a hearing under section 505(e) of the Federal Food, Drug, and Cosmetic Act on a proposed order of the Secretary to withdraw approval of an application for such drug under such section because the Secretary has determined that the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling;

(B) a biological product, other than a vaccine which—

(i) may only be dispensed upon prescription,

(ii) is licensed under section 351 of the Public Health Service Act, and

(iii) is produced at an establishment licensed under such section to produce such product;

(C) insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act; and

(D) a drug which may be sold without a prescription (commonly referred to as an "over-the-counter drug"), if the drug is prescribed by a physician (or other person authorized to prescribe under State law).

(3) LIMITING DEFINITION.—The term "covered outpatient drug" does not include any drug, biological product, or insulin provided as part of, or as incident to and in the same setting as, any of the following (and for which payment may be made

under a MediGrant plan as part of payment for the following and not as direct reimbursement for the drug):

(A) Inpatient hospital services.

(B) Hospice services.

(C) Dental services, except that drugs for which the MediGrant plan authorizes direct reimbursement to the dispensing dentist are covered outpatient drugs.

(D) Physicians' services.

(E) Outpatient hospital services.

(F) Nursing facility services and services provided by an intermediate care facility for the mentally retarded.

(G) Other laboratory and x-ray services.

(H) Renal dialysis services.

Such term also does not include any such drug or product for which a National Drug Code number is not required by the Food and Drug Administration or a drug or biological used for a medical indication which is not a medically accepted indication. Any drug, biological product, or insulin excluded from the definition of such term as a result of this paragraph shall be treated as a covered outpatient drug for purposes of determining the best price (as defined in subsection (c)(1)(C)) for such drug, biological product, or insulin.

(4) MANUFACTURER.—The term "manufacturer" means, with respect to a covered outpatient drug, the entity holding legal title to or possession of the National Drug Code number for such drug.

(5) MEDICALLY ACCEPTED INDICATION.—The term "medically accepted indication" means any use for a covered outpatient drug which is approved under the Federal Food, Drug, and Cosmetic Act, or the use of which is supported by one or more citations included or approved for inclusion in any of the following compendia:

(A) American Hospital Formulary Service Drug Information.

(B) United States Pharmacopeia-Drug Information.

(C) American Medical Association Drug Evaluations.

(D) The peer-reviewed medical literature.

(6) MULTIPLE SOURCE DRUG; INNOVATOR MULTIPLE SOURCE DRUG; NONINNOVATOR MULTIPLE SOURCE DRUG; SINGLE SOURCE DRUG.—

(A) DEFINED.—

(i) MULTIPLE SOURCE DRUG.—The term "multiple source drug" means, with respect to a rebate period, a covered outpatient drug (not including any drug described in paragraph (2)(D)) for which there are 2 or more drug products which—

(I) are rated as therapeutically equivalent (under the Food and Drug Administration's most recent publication of "Approved Drug Products with Therapeutic Equivalence Evaluations"),

(II) except as provided in subparagraph (B), are pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C) and as determined by the Food and Drug Administration, and

(III) are sold or marketed in the State during the period.

(ii) INNOVATOR MULTIPLE SOURCE DRUG.—The term "innovator multiple source drug" means a multiple source drug that was originally marketed under an original new drug application or product licensing application approved by the Food and Drug Administration.

(iii) NONINNOVATOR MULTIPLE SOURCE DRUG.—The term "noninnovator multiple source drug" means a multiple source drug that is not an innovator multiple source drug.

(iv) SINGLE SOURCE DRUG.—The term "single source drug" means a covered outpatient drug which is produced or distributed under an original new drug application approved by the Food and Drug Administration, including a drug product marketed by any cross-licensed producers or distributors operating under the new drug application or product licensing application.

(B) EXCEPTION.—Subparagraph (A)(i)(II) shall not apply if the Food and Drug Administration changes by regulation the requirement that, for purposes of the publication described in subparagraph (A)(i)(I), in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C).

(C) DEFINITIONS.—For purposes of this paragraph—

(i) drug products are pharmaceutically equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity;

(ii) drugs are bioequivalent if they do not present a known or potential bioequivalence problem, or, if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence; and

(iii) a drug product is considered to be sold or marketed in a State if it appears in a published national listing of average wholesale prices selected by the Secretary, if the listed product is generally available to the public through retail pharmacies in that State.

(7) NONPRESCRIPTION DRUGS.—If the MediGrant plan of a State participating in the MediGrant master rebate agreement under this section includes coverage of prescribed drugs as described in section 2171(a)(1)(H) and permits coverage of drugs which may be sold without a prescription (commonly referred to as "over-the-counter" drugs), if they are prescribed by a physician (or other person authorized to prescribe under State law), such a drug shall be regarded as a covered outpatient drug for purposes of the State's participation in the agreement.

(8) REBATE PERIOD.—The term "rebate period" means, with respect to an agreement under subsection (a), a calendar quar-

ter or other period specified by the Secretary with respect to the payment of rebates under such agreement.

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OMNIBUS BUDGET RECONCILIATION ACT OF 1989

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SEC. 6408. OTHER MEDICAID PROVISIONS.

(a) INSTITUTIONS FOR MENTAL DISEASES.— * * *

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(3) MORATORIUM ON TREATMENT OF CERTAIN FACILITIES.— Any determination by the Secretary that Kent Community Hospital Complex in Michigan or Saginaw Community Hospital in Michigan is an institution for mental diseases, for purposes of title XIX of the Social Security Act shall not take effect until ⟦December 31, 1995⟧ *the first day of the first quarter on which the MediGrant plan for the State of Michigan is first effective under title XXI of such Act.*

* * * * * * *

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 9, 1995.

Hon. THOMAS J. BLILEY, Jr.,
Chairman, Committee on Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office [CBO] has prepared the enclosed cost estimate for the Medicaid reconciliation recommendations of the House Committee on Commerce, as approved on September 22, 1995.

The estimate shows the budgetary effects of the committee's proposals over the 1996–2002 period. CBO understands that the Committee on the Budget will be responsible for interpreting how these proposals compare with the reconciliation instructions in the budget resolution. The estimate assumes that the reconciliation bill will be enacted by November 15 and could change if the bill is enacted later.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Medicaid reconciliation recommendations of the House Committee on Commerce.

2. Bill title: Medicaid Transformation Act of 1995.

3. Bill status: As reported by the House Committee on Commerce on September 22, 1995.

4. Bill purpose: To provide block grants to States to enable them to provide medical assistance to low-income individuals and families in a more effective, efficient, and responsive manner.

5. Estimated cost to the Federal Government: The following table summarizes the budgetary impact of the committee's recommendations.

BUDGETARY IMPACT OF THE MEDICAID RECONCILIATION RECOMMENDATIONS OF THE HOUSE COMMITTEE ON COMMERCE (DIRECT SPENDING)

[Outlays by fiscal years, in billions of dollars]

	1996	1997	1998	1999	2000	2001	2002
Project spending under current law:							
Medicaid (title XIX)	99.3	110.0	122.1	134.8	148.1	162.6	177.8
Projected spending under proposal:							
Medicaid	24.6	0	0	0	0	0	0
MediGrant (title XXI)	71.0	102.1	106.2	110.5	114.9	119.5	124.3
Total	95.7	102.1	106.2	110.5	114.9	119.5	124.3
Proposed changes:							
Net reduction in outlays	−3.6	−7.9	−15.8	−24.4	−33.2	−43.1	−53.5

6. Basis of estimate: This estimate assumes the reconciliation bill will be enacted by November 15, 1995; the estimate could change if the bill is enacted later.

The Medicaid Transformation Act would repeal title XIX of the Social Security Act (Grants to States for Medical Assistance) and replace it with title XXI (MediGrant Program for Low-Income Individuals and Families). The MediGrant Program would provide funds to States to pay for medical assistance for low-income individuals but, unlike Medicaid, it would not provide an entitlement to any individual or group of individuals eligible for benefits under the State programs. CBO estimates that the repeal of Medicaid and enactment of MediGrant would reduce projected Federal spending by $3.6 billion in 1996 and $181.6 billion during the 1996–2002 period.

The proposal would limit Federal MediGrant obligations in total and for each State, with the aim of achieving specified outlay targets (called "pool amounts"). The proposal would authorize a pool of funds to be distributed among States for the purpose of providing medical assistance to low-income individuals. The bill specifies the pool amounts for 1996 through 2002. After 2002, the pool amounts would be increased by the lesser of 4 percent or the annual percentage increase in the consumer price index. The bill also establishes a procedure for computing the obligation limitations for each year based on the specified pool amounts.

Under the MediGrant Program States would continue to pay of medical assistance for eligible individuals and collect a Federal share of those payments from the Federal Government. The Federal Government would pay each State at the Federal matching rate for that State up to a limit determined by an allocation formula in the bill. The allocation formula would distribute the pool of funds by inflating 1994 Medicaid payments for each State, adjusting for case mix, medical costs, and the number of individuals in poverty in each State, and calibrating each State's amount so that the sums of all 50 States allocations do not exceed the total in the pool.

Although the MediGrant Program would become effective in 1996, the Federal Government and the States would remain liable for claims resulting from Medicaid obligations incurred prior to the enactment of the proposal. The formula for allocating MediGrant obligations in 1996 would reflect the estimated payment of old Medicaid claims. The proposal specifies the total estimated amount of Medicaid outlays in 1996, and the Secretary of Health and Human Services [HHS] would allocate the total among the States. Providers and States would have until June 30, 1996, to submit claims incurred under Medicaid prior to enactment of the proposal, and the Federal Government would pay all valid claims submitted, whether they exceeded or fell short of the Secretary's estimate. Medicaid would cease to be an individual entitlement upon the enactment of the proposal, and its obligations after enactment would be included in the MediGrant obligation limit for 1996.

Because the amounts allocated to the States would be significantly lower than projected spending on beneficiaries under current law, CBO assumes that all States would draw down their full allocation. As a result, estimated Federal spending under title XXI would equal the pool amounts specified in the bill. The estimated savings to the Federal budget would be the difference between projected Medicaid outlays and the outlays associated with the MediGrant pool amounts.

7. Estimated costs to State and local governments: The costs of the MediGrant Program, like those of Medicaid, would be shared by the Federal and State and local governments, except that the Federal contribution would be capped; the Federal Government would match States spending up to limits determined by the allocation formula in the act. Although the States would gain considerable flexibility to design and manage their own programs, the MediGrant proposal—unlike an unrestricted block grant—would place important limitations on how States could spend their Federal Funds. The States responses to the proposed law would vary, as would the impacts of the proposal on State and local budgets and the provision of medical care to the targeted population groups. In addition, some States might have difficulties making the transition from Medicaid to the MediGrant Program, particularly in the short term.

ALLOCATION OF FUNDS AMONG THE STATES

The allocation of a limited pool of Federal funds for medical assistance among the States presents a complex problem when the Congress is seeking to transform a program such as Medicaid. Federal Medicaid spending per person in poverty varies widely among the States and bears little relationship to measurable criteria of need. That variation reflects the cumulative effects of the decisions of individual States over a 30-year period. The MediGrant proposal, which would codify the allocation of the limited pool of Federal funds, has drawn attention to the current disparities among the States.

The Commerce Committee's proposal reflects the desire to relate Federal spending more closely to variations in need among the States, while avoiding the major disruptions that would occur in some States if sudden dramatic changes were made in the distribution of Federal funds. The proposal incorporates a complicated allocation process, based on a measure of need that takes into account the size of a State's poverty population, case mix, and input costs. Because that formula, unadjusted, would produce large changes in the distribution of Federal payments among the States, the resulting allocation would be constrained in two ways. First, the allocation would start from a base of each State's actual spending in 1994, inflated by a uniform 14.8 percent to 1996. After that year, a State's needs-based allocation would be modified through the use of minimum and maximum growth rates for Federal expenditures. The annual allocations among the States would be calibrated to the amount available in the MediGrant pool for the year.

Even with the constraints imposed by the floors and ceilings, States would experience significantly different growth rates in Federal contributions, both absolutely and relative to their projected Federal contributions under current law. Two features of the resulting allocation among the States are worthy of note. First, because the size of a State's poverty population is a component of the needs formula, States with rapidly growing poverty populations would probably increase their share of Federal MediGrant expenditures over time. Second, the 1994 base-year expenditures would incorporate payments to disproportionate share hospitals [DSH]. Because of current limitations on the growth of Federal Medicaid expenditures in States with high DSH payments, those States would generally face the least change from baseline Federal spending over the 1996–2002 period.

EFFECTS OF THE PROPOSAL ON STATES FLEXIBILITY

States would gain flexibility to manage their medical assistance programs in several areas, including covered services, reimbursement levels, and service delivery mechanisms. In general, States could decide which services they wanted to pay for, which providers they wanted to reimburse, and the amounts they wanted to pay for services. They would no longer be constrained to provide the same level of medical assistance on a statewide basis, nor would comparability of coverage among beneficiaries be required. In addition, unlike current Medicaid policy, they would be able to determine (without a Federal waiver) the delivery mode of health care to beneficiaries—mandatory enrollment in risk-based managed care plans, for example.

States would continue to face significant restrictions on their program operations, however, especially in the area of program eligibility. Each State would be required to submit detailed States medical assistance plans to the Secretary of HHS and to meet set-aside requirements. The set-asides would insure that minimum percentage of each State's block grant was used to cover low-income individuals in certain categories (disabled, elderly, and families). The set-asides for each State would be based on 85 percent of the portion of current-law spending for each of those populations averaged over the 1992–94 period. Although the set-aside amounts would generally be based on mandated expenditures for mandated populations, the required set-aside for the low-income elderly would include the expenditures of Medicaid's elderly nursing home population, many of whom are not covered by mandate. The set-aside provisions for the elderly would also require States to devote a minimum percentage of funds to pay for Medicare premiums.

The set-aside provisions would restrict States abilities to shift resources among population groups to address specific State needs, and could make it difficult for States to reap the benefits of greater efficiency in service delivery for particular groups. If they wanted to reduce the minimum required expenditure for a particular beneficiary group, States would be required to have an approved plan amendment. in order to get an amendment approved, they would have to demonstrate to the Secretary of HHS that the health care needs of the particular beneficiary group could reasonably be met at a lower spending level.

RESPONSES BY THE STATES

States' responses to reductions in the projected rate of growth of Federal spending for medical assistance are highly uncertain. How far the overall rate of growth of spending on medical assistance would be reduced as a result of the Federal cap would depend on whether States chose to expand or contract their own contributions. The effects on current Medicaid beneficiaries and providers would depend on the ways in which States restructured their Medicaid programs in response to the flexibility and limitations of the MediGrant Program. States could seek more efficient ways to delivery services by contracting with managed care providers and other alternative systems of care, or by developing new private insurance options for program beneficiaries. They might also respond by reducing payments to providers, offering fewer benefits, or limiting eligibility.

Under the current Medicaid Program, every dollar that a State spends produces at least 50 cents in Federal support, providing a strong incentive for States to expand their programs. The MediGrant Program would reduce that incentive in two ways. Federal support would end once a State had reached its cap, eliminating at the margin the financial incentive for States to continue to spend their own funds. In addition, the MediGrant Program would raise the Federal matching rate for some States. With higher Federal matching rates, States would draw down Federal funds more quickly, and would reach their allocation caps with lower State expenditures.

States could undoubtedly improve the efficiency of their Medicaid Programs and the proposal would increase their incentives to do so. Many States have already moved in that direction through enrolling beneficiaries in managed care. Thus far, the shift to managed care has focused primarily on low-income families, who account for less than one-third of overall Medicaid spending. Few States have enrolled elderly and disabled beneficiaries—with their extensive acute and long-term care needs—in managed care programs. Developing new, more cost-efficient, ways to provide services to those populations would be a major challenge for the States to address in a short span of time.

Improvements in efficiency alone would probably be insufficient to reduce spending under current policy to the levels specified in the bill. States would, therefore, seek other ways to adapt to the new Federal spending limits. Several options would be available and many States might find that they needed to use combinations of all of them. Some States might choose to spend more of their own funds to expand their ability to provide medical assistance. Other options include: foregoing extensions of coverage to new groups of beneficiaries; curtailing expansions of benefits; and reducing payments to providers. If those measures did not achieve enough savings, States might turn to increasing cost-sharing for beneficiaries and scaling back eligibility and services below current levels. In addition, some States might reduce spending for such activities as quality assurance, database development, and program oversight, relative to their spending on medical assistance.

The set-aside requirements of the proposal would place some constraints on the extent to which benefits and enrollment could be reduced, although many States offer a wide range of optional services and cover many optional groups in their Medicaid Programs. Reducing payments to providers might become a more viable option for States under the MediGrant proposal, which would repeal both the Boren amendment—relating to the adequacy of payments to hospitals and nursing homes—and the requirement that States pay community health centers on the basis of their costs. On the other hand, States would face a new restriction on payments to rural providers.

TRANSITION ISSUES

The proposal would require States to have their MediGrant Programs up and running by October 1, 1996. Prior to that date, new State plans would have to be developed and approved by the Secretary of HHS, and new systems for establishing eligibility, delivering medical services, reimbursing providers, and collecting program data might be necessary. Some States might have difficulty reconfiguring their programs within that timeframe.

Because restraints on Federal funding would come into effect upon enactment of the legislation, States could face fiscal programs in 1996 with spending for medical assistance growing more rapidly than Federal payments under the new program. Although the termination of the Federal entitlement for individuals would also be effective immediately, some States might have to take legislative action to end the entitlement at the State level. Similarly, changes in contracts with providers would probably take time to become effective.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Jean Hearne, Robin Rudowitz, and Linda Bilheimer.

11. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Subcommittee on Health and Environment held oversight and legislative hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the committee by the Committee on Government Reform and Oversight.

COMMITTEE COST ESTIMATE

The committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill would have no inflationary impact.

TITLE XVII—DEPARTMENT OF COMMERCE ABOLITION

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, October 6, 1995.

Hon. JOHN R. KASICH,
Chairman, Committee on the Budget,
Washington, DC.

DEAR MR. CHAIRMAN: I am transmitting herewith the recommendations of the Committee on Commerce for changes in laws within its jurisdiction, excluding recommendations for Medicare and Medicaid, pursuant to the provisions of section 310 of the Congressional Budget Act of 1974 and section 105(a)(2)(B)(iii) of House Concurrent Resolution 67, the Concurrent Resolution on the Budget—Fiscal Years 1996 to 2002. The committee's recommendations for Medicare and Medicaid will be transmitted to you separately.

The enclosed recommendations were embodied in a series of committee prints adopted by the committee on September 13, 1995 and September 19, 1995. Pursuant to your instructions, the legislative language of these committee prints has been incorporated into Title III as follows:

Subtitle A: Communications; subtitle B: Nuclear Regulatory Commission Annual Charge; subtitle C: United States Enrichment Corporation; subtitle D: Waste Isolation Pilot Project; subtitle E: Naval Petroleum Reserves; and subtitle F: Department of Commerce Abolition. Also enclosed is the accompanying report language and a Ramseyer submission.

Regrettably, as of this date, the committee has not yet received the official cost estimate for Title III from the Congressional Budget Office. Despite this fact, the Commerce Committee does not wish to delay your committee's consideration of the fiscal year 1996 Omnibus Budget Reconciliation Act. I am, therefore, transmitting the committee's recommendations at this time with the understanding that the Commerce Committee will be permitted to submit additional material with respect to the cost estimate if warranted after the Congressional Budget Office transmits their cost estimate.

If you have any questions concerning the committee's recommendations, or if I can be of any further assistance to you as you proceed with the committee's deliberations, please do not hesitate to contact me.

Sincerely,

THOMAS J. BLILEY, Jr.,
Chairman.

Enclosures.

[Editor's note: References to subtitle F in the transmittal letter and report language submitted by the Committee on Commerce apply to title XVII in this document, the Department of Commerce Abolition.]

TABLE OF CONTENTS

PURPOSE AND SUMMARY

The purpose of subtitle F is to reduce Federal spending and the size of the Federal Government by dismantling the Department of Commerce. Subtitle F terminates many of the Department's grantmaking programs, eliminates the Department's agencies for which authorization has expired, abolishes several of the Department's recently created superbureaucracies, and consolidates the remaining functions into other Departments or agencies. Except for the Bureau of the Census and the Patent and Trademark Office, a spending cap of 75 percent of fiscal year 1994 expenditures is imposed on all transferred agencies or functions. Listed below is a summary of the disposition under this legislation for each of the Department's function groups, in alphabetical order:

Bureau of Export Administration [BXA].—See International Trade Administration [ITA].

Economic Development Administration [EDA].—Abolished. All of the programs within EDA (Planning Grants; Technical Assistance Grants; Development Grants; Economic Adjustment Grants; Research, Evaluation and Demonstration Grants; Defense Economic Investment Grants; Trade Adjustment Assistance Grants; and Competitive Communities Grants) are terminated.

Economics and Statistics Administration [ESA].—Abolished. The Bureau of Economic Analysis and the Bureau of the Census are merged into a new free-standing Federal Statistics Administration [FSA]. The Federal coordinating authority of the Office of Statistical Policy within the Office of Management and Budget is transferred to the head of the Federal Statistics Administration.

International Trade Administration [ITA].—The critical trade functions of the Department of Commerce are transferred into a new United States Trade Administration [USTA]. The USTA will be the center of future Federal trade promotion activities, and shall include the U.S. Trade Representative [USTR], the International Trade Administration [ITA], the Bureau of Export Administration [BXA], and the headquarters and foreign component of the U.S. and Foreign Commercial Service (which shall be renamed the U.S. Trade Service). The USTA shall be responsible for carrying out any continuing responsibilities for the U.S. Travel and Tourism Administration [USTTA], which is abolished effective August 1996, and the Trade and Development Agency [TDA], which is abolished 6 months after enactment.

Minority Business Development [MBDA].—A redundant and unauthorized agency, the MBDA is terminated.

National Oceanic and Atmospheric Administration [NOAA].—NOAA is transferred to the Department of Agriculture. The National Ocean Service [NOS] and the Office of Oceanic and Atmospheric Research [OAR] are abolished. The NOAA Corps is abolished on September 30, 1997. Specific NOAA-related programs that are eliminated include: the National Undersea Research Program; the Fleet Modernization, Shipbuilding, and Construction Account; the Charleston, SC, Special Management Plan; the Chesapeake Bay Observation Buoys; the Federal/State Weather Modification Grants; the Southeast Storm Research Account; the Southeast United States Caribbean Fisheries Oceanographic Coordinated Investigations Program; the National Institute for Environmental Renewal; the Lake Champlain Study; the Maine Marine Research Center; the South Carolina Cooperative Geodetic Survey Account; the Pacific Island Technical Assistance; the Sea Grant/Oyster Disease Account; the National Coastal Research and Development Institute Account; the VENTS Program; the NWS non-Federal, nonwildfire Fire Weather Service; the NWS Regional Climate Centers; the NWS Samoa Weather Forecast Office Repair and Upgrade Account; the Dissemination of Weather Charts (Marine Facsimile Service); the Global Climate Change Program; and the Global Learning and Observations to Benefit the Environment Program. NOAA fisheries program responsibilities are transferred to the Maritime Administration within the Department of Transportation, including the Operating Differential Subsidy Program, the Ship Mortgage Insurance Program, the Outer Continental Shelf Program, and the Fishermen's Protective Act of 1967. NOAA responsibilities for mapping, charting, geodesy, observation, and prediction of tides and sea level are transferred to the Director of the U.S. Geological Survey. The National Weather Service shall not compete with the private sector if a service is or can be provided by private enterprise.

National Telecommunications Information Administration [NTIA].—All grantmaking programs within the NTIA are eliminated, including the construction assistance programs for public telecommunications facilities, Endowment for Children's Educational Television, and Telecommunications Demonstration grants. NTIA labs are to be privatized. The remaining NTIA functions (Federal spectrum management, standard setting, and international telecommunications policy) are transferred to the United States Trade Administration.

Patent and Trademark Office [PTO].—The Patent and Trademark Office [PTO] is privatized as a wholly owned Government corporation, which shall be responsible for the granting and issuing of patents and registration of trademarks, conducting and authorizing studies on international patent and trademark law, and disseminating patent and trademark information to the public.

Technology Administration [TA].—The policy and standard-setting functions of the National Institute of Standards and Technology [NIST] are transferred to the United States Trade Administration to ensure a focus on maximizing American international competitiveness. NIST laboratories are to be privatized. The National Technical Information Service [NTIS], which collects and sells Federal research reports to the private sector, is already fee funded, and is therefore to be privatized. Other Federal agencies will be required to continue submitting information to the NTIS, although now in electronic form to facilitate access over the Internet and the World Wide Web. NIST's National Quality Program to recognize private sector achievements in quality attainment is terminated, but a sense of Congress expresses the desire to continue this program under private auspices. The remaining functions within the Technology Administration (the Office of Technology Policy, the Manufacturing Extension Partnership, and the advance Technology Program) are terminated.

United States Travel and Tourism Administration [USTTA].— See International Trade Administration [ITA].

BACKGROUND AND NEED FOR LEGISLATION

The Department of Commerce was established in 1913 as an outgrowth of the Department of Commerce and Labor, and has grown into a $4 billion agency with over 36,000 employees. Its diverse functions include marine and atmospheric research, technology programs, development grants, statistics and information gathering, export controls and promotion, patents, and telecommunications.

According to the December 1992 U.S. General Accounting Office [GAO] Transition Series, the Department of Commerce suffers the most complex web of divided authorities, sharing overlapping missions with over 71 different Federal agencies. In testimony received by the Commerce Committee on July 24, 1995, from Ms. Robin Lanier, vice president for international trade and the environment at the International Mass Retail Association, "It's clearly time to eliminate the extraneous parts of the Commerce Department * * * [it] has outlived its mission in many cases and Congress needs to revamp and restructure the remaining international trade programs." Former Commerce Department officials have testified that the Department performs relatively few unique functions, which often are burdened by layers of bureaucracy and political appointees. Dr. Murray Weidenbaum, director, Center for the Study of American Business, Washington University, testified that the latest U.S. Government Organization Manual "lists, for the Commerce Department, an extensive array of 6 undersecretaries, 7 deputy undersecretaries, 13 assistant secretaries, 32 deputy assistant secretaries, plus an assortment of counselors, special assistants, executive assistants, an associate deputy secretary, an assistant deputy secretary, and one associate under deputy secretary." Other critics, such as Mr. Wayne Berman, senior advisor to Lazard Freres, have noted that many of the Department's functions are in competition with the private sector, either directly or preemptively.

The Concurrent Budget Resolution for fiscal year 1996 calls for the elimination of the Department of Commerce. In contrast, the administration's fiscal year 1996 budget proposed increasing the fund for the Department of Commerce by $561 million from the previous fiscal year. Total spending would rise from $2.798 billion in fiscal year 1993 to $4.109 billion this year, thus attaining a level 46.9 percent higher than when the President took office. This skyrocketing of the Department of Commerce budget has proceeded apace, despite warnings from the Inspector General's September 30, 1994, "Report to the Congress" that there are "serious problems with the reliability, efficiency, and internal controls of Commerce's financial practices and systems," and that the Department's managers have demonstrated "little interest" and a "lack of commitment" for proper financial controls, according to the Commerce Inspector General's March 31, 1994, "Report to the Congress."

About half of the Department's budget is spent on the National Oceanic and Atmospheric Administration [NOAA], which includes commercial fisheries management, endangered species protection and marine habitat management, environmental research, ocean navigation mapping, and weather forecasting, NOAA research and operational activities are supported by the seventh uniformed service, the NOAA Corps—a 400-member special commissioned officer corps which performs scientific and administration functions, and operates NOAA's aging fleet. The Department of Commerce Inspector General has questioned whether NOAA needs its own uniformed service corps and fleet, at an expected modernization cost of over $2 billion. In his March 1995 message to Congress, the Inspector General also criticized NOAA for maintaining laboratories which "conduct research that appears to duplicate that of other facilities."

The Technology Administration [TA] programs of the existing Commerce Department are intended to promote commercial research and technological development. The rationale of the Technology Administration's expanding budget was to provide critical seed money to undercapitalized firms for the development of high-risk technologies in a government-business partnership, but critics have scorned many of the programs as inefficient and ineffective Federal industrial policy tools. One of TA's primary components is the National Institute of Standards and Technology [NIST], which Dr. Weidenbaum singled out as "a clear example of bureaucratic sprawl * * * The agency's outlays are budgeted to rise more than 300 percent just in the two-year period 1994–96." Other bureaus include the Office of Technology Policy [OTP] and the National Technical Information Service [NTIS]. The Inspector General criticized the TA for not having established meaningful performance goals, reliable reporting systems, or written procedures to avoid impropriety and favoritism. Recipients of TA's critical seed money have included such highly capitalized firms as IBM, Xerox, DuPont, General Electric, and 3M.

The Economic Development Administration was established in 1965 as part of President Lyndon Johnson's Great Society program, providing Federal funds to subsidize economic development in distressed communities. Dr. James C. Miller III, counselor, Citizens for a Second Economy, testified that, "in the past, this organization, with spending approaching half-a-billion dollars annually, has been entirely too wasteful of taxpayer's money and has been used more of political purposes than for economic." In the March 31, 1995, "Report to the Congress," the Inspector General reported "serious problems in financial management at EDA" over the past several years, and has suggested terminating the agency. Vice President Al Gore in the "Accompanying Report of the National Performance Review" noted that at least seven Federal programs assist States and localities with economic and regional development, and all "[t]hese economic and regional development efforts are characterized by fragmentation, poor quality, and excessive bureaucracy." Vice President Gore further stated that the EDA's offices "now duplicate many state and local efforts * * * [and] EDA's uncertain political support has contributed to a variety of problems, including reduced morale, lower staff quality, poor operation and administration of programs. * * *" Dr. Weidenbaum testified that "EDA should not be cut back, it should be abolished * * * that overdue action would save taxpayers $427 million in 1996."

The Minority Business Development Agency [MBDA] was created by Executive order by President Nixon in 1971 to provide grants and loans to minority-owned businesses in the hopes of increasing employment and development. The MBDA has never been authorized by Congress. Critics of the MBDA argue that its functions are already duplicated by the programs of the Small Business Administration. Similarly, in the March 31, 1995, "Report to the Congress," the Inspector General recommended consolidation of the numerous Federal programs and agencies which provide assistance to minority-owned businesses. Furthermore, Dr. Miller of CSE pointed out that while "the objective of increasing minority participation in business is laudable * * * direct preference programs such as this are very costly to taxpayers and constitute 'reverse' discrimination."

The Economic Statistics Administration [ESA] provides economic forecasting through the Bureau of Economic Analysis [BEA] and the Bureau of the Census. According to the GAO report "Statistical Agencies: Adherence to Guidelines and Coordination of Budget," the total Federal statistical system is costing taxpayers $2.6 billion in Fiscal Year 1995, and 72 Federal agencies spend over a half-million dollars each on statistical collection and analysis. Former Census Director Barbara Bryant and former Bureau of Labor Statistics Director Janet Norwood recommend consolidation of Federal statistical functions, preferably as an independent statistical agency. Similarly, Commerce Secretary Ronald Brown has recommended consideration of consolidating the Federal statistical systems. Statistical consolidation potentially would result in significant cost savings and increased methodological uniformity.

The Department of Commerce's trade functions comprise approximately 7 percent of its total budget, and approximately only 10 percent of the total Federal trade budget. Trade programs are currently divided amount 19 different Federal agencies, ostensibly coordinated by the Trade Promotion Coordinating Committee [TPCC]. The Export Enhancement Act of 1992 requires the TPCC (chaired by the Secretary of Commerce) to establish program priorities and propose a unified budget for all Federal trade promotion. However, according to the GAO, this requirement has not yet been fulfilled—in large part due to a lack of interagency cooperation.

The Department's trade policy is conducted primarily through the International Trade Administration [ITA], which is made up of the U.S. & Foreign Commercial Service [USFCS], the International Economic Policy [IEP] unit, the Trade Development [TD] unit, the Office of Import Administration, and the Office of Textiles and Apparel. The testimony of Ms. Lanier indicated that "trade development programs as they stand now in the Commerce Department are not effective * * * maintaining this outdated institutional framework is not helpful to many U.S. industries.'' She continued by expressing ''hope that your subcommittees will do more than just transfer offices from one agency to another.''

Among the various units, the USFCS provides U.S. exporters with contacts and knowledge about foreign governments and local conditions and opportunities. In his written testimony, former Commerce Department official Wayne Berman pointed out the USFCS ''has been one of the more effective—perhaps the most effective—part of Commerce in recent years.'' However, he also stated that it could ''be made better and more effective by eliminating its most marginal elements—namely, the U.S.-based trade promotion offices * * * [which] have become obsolete in the age of the fax and the Internet.''

Another unit, the IEP, has responsibility for collecting and analyzing trade information on specific international regions. Mr. Berman singled out this department as ''both too big and currently underutilized in the formulation of trade policy.'' It performs a significant amount of support work for the USTR, sets up U.S. public/private groups to meet with foreign country representatives, maintains a computer information service, and answers questions for U.S. businesses on issues such as current tariff rates in various foreign locales.

The TD collects and analyzes U.S. domestic industry statistics. Approximately one-third of the TD's staff time and resources are spent supporting the USTR. TD is also responsible for 17 Industry Sector Advisory Committees [ISAC's], 3 functional [IFAC] committees, and Industry Policy Advisory Committee [IPAC], the President's Export Council, and 51 District Export Councils. Referred to as '' counterproductive deadwood,'' Mr. Berman and others advocated the elimination of the TD. The Import Administration investigates antidumping and countervailing duty cases, and administers certain import programs such as the United States-Japan semiconductor agreements. Finally, the Office of Textiles and Apparel supports a 40-person staff to monitor textile imports and domestic production data and was referred to by Mr. Berman as ''the perfect example of corporate welfare run amok.''

The Department's Bureau of Export Administration [BXA] is responsible for implementing controls on U.S. exports for foreign policy, national security, and short supply objectives. It shares licensing authority with the Departments of State, Defense, Energy, and Treasury. Export licenses can often get delayed for months while the various agencies try to reach and agreement over the application. A report by the National Academies of Science and Engineering argue that export licensing would best be consolidated into BXA, which handles the wide majority of the applications, has a comprehensive regulatory scheme, and has already been tasked by Congress under the Export Administration Act as the appropriate implementing agency. Further reforms and consolidation of export control functions were urged by Mr. Edward S. Black, president, Computer & Communications Industry Association, who pointedly testified that ''the way the government has mishandled export controls for years is an embarrassment.''

The Department's U.S. Travel and Tourism Administration [USTTA] was created in 1981 to conduct surveys, distribute promotional materials, and run marketing shows (such as "Pow Wow Europe"). It also administers the Disaster Relief Financial Assistance Program to support tourism in disaster-affected regions. Dr. Miller succinctly testified that "this program does not have a compelling federal purpose." The House has already reduced USTTA's appropriations to $2 million this year in order to fund the agency only through the October 30 and 31, 1995 White House Conference on Tourism and Travel.

The Patent and Trademark Office [PTO] examines and approves applications for patents for claimed inventions and registration of trademarks. While the PTO is presently self-funded, it is still subject to annual appropriations while Treasury collects its fees. In fact, Congress has siphoned away nearly $59 million in PTO fee income for other purposes over the last 3 years. The average wait for a patent approval is 18 months, and the patent bar has indicated a willingness to support increased patent fees, but only if the money is restored to PTO for improving efficiency and timeliness. Reforming the PTO into a government-sponsored enterprise would enable it to hire and fire staff, purchase equipment, and adjust fee levels according to need.

The National Telecommunications and Information Administration [NTIA] establishes grants for public television and radio, provides funds for development of computer telecommunications information networks, and manages the designated Federal portion of the electromagnetic spectrum. The Public Telecommunications Facilities Program has "outlived its usefulness and should be severely curtailed or eliminated," according to the Department of Commerce Inspector General. Other grant-making NTIA programs have been similarly criticized.

The Department of Commerce shares its missions with at least 71 Federal Departments, Agencies, and Offices, and in the words of Mr. Joe Cobb, John M. Olin Senior Fellow in Economic Policy, The Heritage Foundation, "the Department of Commerce has grown into a 'Department of Miscellaneous Affairs'." Former Commerce Secretary Robert Mosbacher and others have called for the Department to be "privatized, consolidated, localized, or eliminated." The National Federation of Independent Business, which represents more than 600,000 small American businesses, has stated that its members would rather cut the Federal deficit than save the Commerce Department. The U.S. Chamber of Commerce indicated that it found a similar lack of support among its 200,000 members for retaining the Department. Other business and consumer groups such as the Business Leadership Council, the National Taxpayers Union, Citizens for a Sound Economy, Citizens Against Government Waste, and the International Mass Retail Association, have all called for dismantling the Department. This dismantling is necessary as one more step towards reducing the size of the Federal Government and reducing the Federal debt burden on American taxpayers. Even the GAO has stated that the "[Department of] Commerce lacks the prominence and resources to play a significant role in improving competitiveness."

In evaluating the effectiveness of the Department of Commerce, Dr. Miller testified that it comes down to a question of "whether all of its programs are justified, and for those that are, whether other entities might carry on some of them more reasonably and more cost-effectively." Echoing Dr. Miller, Dr. Weidenbaum testified that "American business, indeed the entire American economy, would be far better off if these Government expenditures were not made and the savings used instead to reduce the deficit or cut taxes—and thus increase the availability of investment capital of the private sector."

HEARINGS

On July 24, 1995, the Subcommittee on Commerce, Trade, and Hazardous Materials, and the Subcommittee on Telecommunications and Finance held a joint hearing on H.R. 1756, the Department of Commerce Dismantling Act of 1995, which included five panels of witnesses. Testimony was received from Representative Richard R. Chrysler; Representative John L. Mica; Representative Sander M. Levin; Representative David E. Skaggs; the Honorable Ron Brown, Secretary of Commerce, U.S. Department of Commerce; the Honorable Larry Irving, Assistant Secretary of Commerce for Communications and Information, U.S. Department of Commerce; Mr. Paul Huard, Sr. vice president of policy communications, Association of Manufacturers; the Honorable James C. Miller, III, counselor, Citizens for a Sound Economy; Dr. Murray Weidenbaum, director Center for the Study of American Business, Washington University; Mr. Stephen Collins, director of Economics and International Affairs Department, American Automobile Manufacturers Association; Mr. Joe Cobb, John M. Olin senior fellow in Economic Policy, The Heritage Foundation; Ms. Robin Lanier, vice president for International Trade & the Environment, International Mass Retail Association; Mr. Edward S. Black, president, Computer & Communications Industry Association; and Mr. E. Martin Duggan, president/CEO, Small Business Exporters Association. Additional written comments were submitted by Dr. Stephen S. Cohen, codirector, Berkeley Roundtable on the International Economy.

On Thursday, September 7, 1995, the Subcommittee on Telecommunications and Finance held a hearing on the Federal management of the radio spectrum, which included testimony from: the Honorable Larry Irving, Assistant Secretary of Commerce for Communications and Information. U.S. Department of Commerce; Mr. James Gattuso, vice president for policy development, Citizens for a Sound Economy; Mr. Dale Hatfield, CEO Hatfield Associates, Inc.; and Dr. Charles L. Jackson, principal, Strategic Policy Research, Inc.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 3100 Sets forth the short title of subtitle F and the table of contents.

Chapter 1—Abolishment of Department of Commerce

Section 3101 establishes the Department of Commerce Programs Resolution Agency [the DCPRA] as a free-standing executive agency. The DCPRA is headed by an Administrator appointed by the President with the advice and consent of the Senate, who shall receive level II compensation, and shall administer the winding-up of all functions and outstanding affairs of the Department of Commerce, including any outstanding Federal obligations.

Section 3102 authorizes the Administrator of the DCPRA to perform all functions deriving from the Department of Commerce that are not abolished or transferred.

Section 3103 creates a Deputy Administrator appointed by and to assist the Administrator.

Section 3104 allows the Secretary of Commerce to act as temporary Administrator and other officers to continue in their capacity at their current compensation rates for the earlier of up to 120 days or until a new Administrator is appointed.

Section 3105 allows the Administrator to reallocate, consolidate, alter or discontinue any function or organizational entity in the Commerce Programs Resolution Agency.

Section 3106 sets forth a 3-year termination date for the abolishment of the Commerce Programs Resolution Agency. Six months after the enactment of this Act, the President shall submit to the Congress a plan for winding up the Agency within the 3-year termination date.

Section 3107 requires within 180 days of enactment the U.S. Comptroller General (Comptroller) to submit to Congress recommendations for the abolishment of the Department and the termination, transfer, or discontinuation of its functions.

Section 3108 contains conforming amendments.

Section 3109 makes Chapter 1 effective 6 months after the date of enactment, except for Sections 3101(b), 3106(c), and 3107, which take effect immediately upon enactment.

Chapter 2—Disposition of Commerce Functions

EDA

Section 3201 repeals the Public Works and Economic Development [PWED] Act of 1965, transfers all Federal financial obligations under this Act to the Secretary of the Treasury, and directs the Treasury Secretary to sell such obligations to the public to the maximum extent practicable. The Comptroller General ("Comptroller") shall within 18 months after enactment audit and report to Congress on all grants made or issued for fiscal year 1995 under the PWED Act, as well as any remaining outstanding Federal rights or obligations.

TA/NIST

Section 3202 terminates the Technology Administration and the Office of Technology Policy. The National Institute of Standards and Technology (the "Institute") is transferred to the United States Trade Administration. The Director of the Institute will assume all previous NIST related responsibilities of the Secretary and Under

Secretary of Commerce. The Institute's labs and the National Technical Information Service [NTIS] are transferred to the DCPRA for sale within 18 months to a private entity intending to perform substantially the same functions; if no such offer is received, the DCPRA shall report to Congress on further disposal recommendations. No additional funds may be appropriated to NTIS after fiscal year 1995, and Federal research reports required to be submitted to NTIS shall be in electronic standardized format. The Malcolm Baldrige National Quality Award is terminated, and section 3202 expresses the sense of Congress that a private-sector entity should continue this program.

NTIA Grants and Labs

Section 3203 repeals the assistance programs for public telecommunications facilities, Endowment for Children's Educational Television, and Telecommunications Demonstration grants. National Telecommunications and Information Administration labs are transferred to the DCPRA for sale within 18 months to a private entity intending to perform substantially the same functions; if no such offer is received, the DCPRA shall report to Congress on further disposal recommendations.

NTIA Functions

Section 3204 transfers the remainder of the National Telecommunications and Information Administration to the United States Trade Administration. The new NTIA within the USTA shall be headed by the NTIA Administrator who shall be appointed by the President with the advice and consent of the Senate.

NOAA

Section 3205 transfers the National Oceanic and Atmospheric Administration [NOAA] to the Department of Agriculture. It allows the Secretary of Agriculture to contract for data or days-at-sea, or to use excess capacity of University National Oceanographic Laboratory System vessels with operator agreement, to fulfill NOAA missions of mapping and charting services, as well as research related to marine, climate, fisheries, and hurricane tracking. The National Ocean Service [NOS] and the Office of Oceanic and Atmospheric Research [OAR] are abolished. No commissioned NOAA Corps officers are authorized after fiscal year 1996, and the Commerce Secretary may separate commissioned officers from the NOAA active list without separation pay. The Department of Defense and the U.S. Coast Guard may accept approved transfers from the NOAA Corps, and subject to the approval of the Administrator, certain corps who on the date of enactment have been assigned for a period of a year or more may transfer to the Administration as members of the civil service. The NOAA Corps and Personnel Center are abolished on September 30, 1997.

NOAA Program Terminations

Several NOAA programs are terminated, including the National Undersea Research Program; the Fleet Modernization, Shipbuilding, and Construction Account; the Charleston, SC, Special Management Plan; the Chesapeake Bay Observation Buoys; the Federal/State Weather Modification Grants; the Southeast Storm Research Account; the Southeast United States Caribbean Fisheries Oceanographic Coordinated Investigations Program; the National Institute for Environmental Renewal; the Lake Champlain Study; the Maine Marine Research Center; the South Carolina Cooperative Geodetic Survey Account; the Pacific Island Technical Assistance; the Sea Grant/Oyster Disease Account; the National Coastal Research and Development Institute Account; the VENTS program; the NWS no-Federal non-wildfire Fire Weather Service; the NWS Regional Climate Centers; the NWS Samoa Weather Forecast Office Repair and Upgrade Account; the Dissemination of Weather Charts (Marine Facsimile Service); the Global Climate Change Program; and the Global Learning and Observations to Benefit the Environment Program. Any unobligated balances appropriated for these programs are transferred to the Treasury's general fund. Several corresponding Acts are repealed. Within 60 days of enactment, the Agriculture Secretary shall report to the House and Senate Science Committees on activities which do not conform to these requirements, with an outline timetable of their elimination.

NOAA fisheries program responsibilities are transferred to the Department of Transportation, including the operating differential subsidy program, the ship mortgage insurance program, the outer continental shelf program, and the Fishermen's Protective Act of 1967. NOAA responsibilities for mapping, charting, geodesy, observation, and prediction of tides and sea level are transferred to the Director of the US Geological Survey. The National Weather Service [NWS] shall not become involved in competition with the private sector where an activity can be performed by a commercial enterprise, unless the Secretary determines that the private sector is unwilling or unable to provide such services, or the service provides vital weather warnings and forecasts for the protection of lives and property of the general public. Within 60 days of enactment, the Agriculture Secretary shall report to the House and Senate Science Committees on NWS activities which do not conform to these requirements, with an outline timetable of their elimination.

No funds available under section 3205 shall be used to influence Congressional legislation, except for requests by Congressional Members for legislative suggestions. Within 120 days after enactment, the Agriculture Secretary shall report to the House and Senate Science Committees on the NOAA laboratories, including the potential savings which could be achieved through closing or consolidation, and a review of all missions, activities, resources, assets, and management. NOAA expenditures are capped at 75 percent of fiscal year 1994 expenditure levels.

Miscellaneous Terminations

Section 3206 abolishes the Economic Development Administration [EDA], the Minority Business Development Administration [MBDA], the National Telecommunications and Information Administration [NTIA], the Advanced Technology Program [ATP], and the Manufacturing Extension Programs. This section expresses the sense of Congress that the Congress should explore private sector prospects to assume the former responsibilities of the MBDA.

U.S. Travel and Tourism Administration

Section 3207 abolishes the United States Travel and Tourism Administration [USTTA] effective August 1, 1996. The Administrator shall submit a prior recommendation to Congress for the privatization of USTAA's functions.

Effective Date

Section 3208 sets an effective date for Chapter 2 of 6 months after enactment, except for sections 3201 and 3206.

User Fees

Section 3209 expresses the sense of Congress that the head of each agency performing a function vested by chapter 2 should, wherever feasible, implement appropriate user fees to offset operating costs.

Chapter 3—Consolidation of Statistical Functions

Section 3301 designates the short title of the "Federal Statistics Agency Establishment Act."

Section 3302 sets forth definitions.

Subchapter A—Establishment of Federal Statistics Agency

Section 3311 establishes a free-standing Federal Statistics Agency [FSA] in the executive branch.

Section 3312 allows the President to appoint, with the advice and consent of the Senate, an Administrator and Deputy Administrator to supervise the FSA, a Director of the Census and a Director of the Bureau of Economic Analysis, and a General Counsel to administer the Office of General Counsel of the Agency, who shall receive compensation at levels II, III, IV, V and V of the Executive Schedule, respectively.

Section 3313 transfers to the FSA the Bureau of the Census, the Bureau of Economic Analysis, and the statistical policy and coordination functions of the Director of the Office of Management and Budget (OMB). These transfers shall be effective 90 days after enactment of this Act.

Subchapter B—Administrative Provisions

Section 3321 allows the Administrator to appoint and compensate officers and employees in accordance with the civil service laws, and to obtain the services of experts and consultants and voluntary services.

Section 3322 allows the Administrator to exercise any authority related to a function which would have been available to the corresponding official responsible for such function before the transfer. The Administrator may delegate further authority as necessary, and may reallocate, consolidate, or abolish agency offices or positions not established by law.

Section 3323 allows the Administrator to enter into contracts with public agencies and private organizations, and to make such payments as necessary, with the exception that any contracting or payment amounts must be provided in advance under appropriation Acts.

Section 3324 authorizes the Administrator to prescribe appropriate rules and regulations.

Section 3325 allows the Administrator to make a seal of office for the FSA.

Section 3326 requires the Administrator after the close of each fiscal year to report to the President for submission to Congress on the activities of the FSA.

Subchapter C—Transitional, Savings, and Conforming Provisions

Section 3331 transfers appropriations and personnel with the statistical functions to the FSA.

Section 3332 provides that compensation and pay grades shall be preserved for 1 year for transferred employees, with executive appointees being compensation at not less than their previous compensation for the duration of their service in the new position.

Section 3333 allows the Director of the OMB, in conjunction with the Administrator, to carry out incidental transfers, dispositions, and terminations as necessary. The Director may also determine the appropriate transfer of Senior Executive Service positions as necessary.

Section 3334 continues the effect of all legal operations (contracts, licenses, regulations, etc.) of any functions transferred, including any pending proceedings as if the transfer had not taken effect, with the new appropriate FSA official substituted where necessary.

Section 3335 substitutes appropriate references to any officer or agency transferred to the new officer or agency within the FSA.

Section 3336 contains conforming amendments.

Section 3337 allows transferred funds to be used to pay for appropriate expenses with the approval of the Director of the OMB, and transferred personnel to be utilized with the consent of the appropriate agency head as reasonably needed, until new funds and personnel are available.

Section 3338 allows the President to designate a temporary officer for up to 120 days to fill an appointed position that requires the advice and consent of the Senate, if such consent has not yet been granted for an officer required under this chapter for a transferred function; compensation for the temporary officer shall be at the normal rate for the position.

Chapter 4—United States Trade Administration

Subchapter A—General Provisions

Section 3401 sets forth Congressional findings regarding American trade.

Section 3402 sets forth definitions.

Subchapter B—United States Trade Administration

Section 3411 creates a United States Trade Administration [USTA] as a free-standing executive branch establishment. The USTA Administrator shall be the United States Trade Representative, who shall have Ambassador status and represent the U.S. in all trade negotiations, and shall be appointed by the President with the advice and consent of the Senate. The USTA shall succeed the Department of Commerce for all trade-related protocol matters.

Section 3412 tasks the USTR, in addition to the functions transferred to it under this chapter, with responsibility for: serving as the President's principal trade advisor; coordinating interagency trade policy; leading international trade negotiations; establishing a national export strategy; general operational responsibility for nonagricultural trade functions; promoting new competitive international trading opportunities; assisting small business exports; enforcing US trade laws; analyzing trade trends; reporting to Congress on trade matters; reporting annual recommendations to Congress on international intellectual property rights enforcement; advising US official advisor delegations; consulting with local governments in trade matters; advising the President on Federal Government policies which might adversely affect US trade competitiveness; and pursuing the international enforcement of intellectual property rights. The USTR shall chair the interagency organizations under the Trade Expansion Act, be a member of the National Security Council, be the Deputy Chair of the National Advisory Council on International Monetary and Financial Policies, consult with the Agriculture Secretary on trade involving agriculture with any such trade negotiations chaired by the USTR and Vice Chaired by the Agriculture Secretary, be chair of the Trade Promotion Coordinating Committee, and be a member of the National Economic Council. The USTR may assign any of its responsibilities for a specific negotiation or meeting to another agency where appropriate.

Section 3413 creates a Deputy Administrator of the USTA appointed by the President, with the advice and consent of the Senate.

Section 3414 creates a Deputy USTR for Negotiations and a Deputy USTR to the World Trade Organization, appointed by the President with the advice and consent of the Senate, who shall have ambassador rank.

Section 3415 creates, appointed by the President with the advice and consent of the Senate, an Assistant Administrator for Export Administration, an Assistant Administrator for Import Administration, and an Assistant Administrator for Trade and Policy Analysis. Each Assistant Administrator shall have authority for the transferred Commerce functions in their area, and shall report to the Deputy Administrator.

Section 3416 creates a USTA General Counsel.

Section 3417 creates a USTA Inspector General.

Section 3418 creates a USTA Chief Financial Officer.

Subchapter C—Transfers to the Administration

Section 3431 transfers all functions of the USTR and the Office of the USTR to the USTR of the USTA.

Section 3432 transfers to the USTR all related functions of the Commerce Under Secretary for International Trade, Assistant Secretary for International Economic Policy, Assistant Secretary for Trade Development, Under Secretary for Export Administration, Assistant Secretary for Import Administration, Secretary relating to the National Trade Data Bank and all trade-related acts for which responsibility is not otherwise assigned.

The U.S. Foreign and Commercial Service [US&FCS] is renamed the United States Trade Service [USTS]. All domestic operations except its headquarters are abolished. All other functions are transferred to the USTR. The USTS shall be headed by a Director General of Trade who shall be appointed by the President with the advice and consent of the Senate, and shall have the rank of Ambassador. The Director General of Trade shall be responsible for all trade promotion functions of the USTA, and shall report directly to the USTR. Transferred US&FCS officers shall not have their rank or compensation reduced.

Section 3433 abolishes the Trade and Development Agency [TDA].

Section 3434 abolishes the Committee for the Implementation of Textile Agreements [CITA], and transfers all of its responsibilities to the USTR, except for domestic impact determinations which are transferred to the International Trade Commission.

Section 3435 requires the USTR within 6 months of enactment to report to Congress a comprehensive plan to consolidate Federal trade programs and activities, including: a summary of current programs, activities, related staff, and resource allocations; and unified budget for reallocating Federal trade priorities; identification and recommendations for eliminating overlapping and duplicative Federal trade missions and functions; and identification of present public/private trade programs along with opportunities for developing and increasing such cooperation.

Subchapter D—Administrative Provisions

Section 3441 allows the USTR to appoint and compensate employees as necessary, and in accordance with civil service laws. The Director of the Office of Personnel Management [OPM] shall, at the request of the USTR, provide for positions above GS–15, although not to exceed the previous number of such positions connected to such functions transferred. The USTR may hire experts and consultants at rates not to exceed GS–15, and may accept voluntary services and provide for incidental expenses. The Secretary of State may classify certain Foreign Service posts as commercial minister positions, upon consultation with the USTR.

Section 3442 allows the USTR to delegate its responsibilities as necessary.

Section 3443 allows the USTR to prescribe the order for top officers to act during an officer's or USTR's absence, disability, or vacancy.

Section 3444 allows the USTR to allocate functions among USTA officers, and to consolidate, alter, or discontinue any organizational entities as appropriate where not inconsistent with a specific provision of this chapter.

Section 3445 allows the USTR to prescribe necessary or appropriate rules and regulations.

Section 3446 allows the USTR to transfer funds within the USTA, so long as such transfer does not alter any appropriation by more than 10 percent, and does not increase any appropriation beyond the authorized levels.

Section 3447 allows the USTR to enter into contracts with other private/public organizations and to make payments as appropriate, so long as any contractual expenditures are within the amounts provided by appropriations acts.

Section 3448 allows the USTR to use, with consent, the resources of an individual or organization in carrying out its functions. The USTR may also allow other entities to use its resources in a manner and at rates in the public interest.

Section 3449 allows the USTR to accept and utilize gifts and bequests to aid the work of the Administration. Such receipts shall be deposited in a separate US Treasury fund, to be disbursed according to the USTR as appropriate, and may be invested in any security guaranteed by the United States.

Section 3450 allows the USTR to establish a working capital fund without fiscal year limitations for necessary expenses for administrative services such as stationery, etc.

Section 3451 allows the USTR to charge fees for processes administered by the Administration, so long as any changes are first submitted to Congress.

Section 3452 requires the USTR to create a seal for the USTA, of which judicial notice shall be taken.

Subchapter E—Related Agencies

Section 3461 reconfigures the Interagency Trade Organization.

Section 3462 reconfigures the National Security Council.

Section 3463 amends the International Monetary Fund with respect to trade consultation directives between the Fund's executive director and the USTR.

Subchapter F—Conforming Amendments

Section 3471 makes conforming changes, including regarding Presidential succession, transfer of trade related functions performed by the Inspector General, and references under trade acts.

Section 3472 repeals certain provisions relating to the Under Secretary of Commerce.

Section 3473 sets compensation rates for: the USTR at level I; the Deputy Administrators and Director General of Trade at level II; the Assistant Administrators at level III; and the General Counsel, Inspector General, and Chief Financial Officer at level IV.

Subchapter G—Transitional, Savings, and Conforming Provisions

Section 3481 transfers any functions of the Department or Secretary of Commerce which is not otherwise transferred and is related to a transferred function to the head of the agency to which the related function is transferred.

Section 3482 allows the Director of the OMB, after consultations with the Director of the OPM, to make any necessary transfers of positions within the Senior Executive Service as necessary.

Section 3483 provides that, except as otherwise provided by this chapter, personnel shall not be, because of a transfer, separated or reduced in compensation for 1 year from such transfer date. Executive officers transferred shall continue at compensation at least as provided before such transfer, for the duration of their service in the new position. Except for members of the Foreign Service, positions whose incumbents are appointed by the President (with the Senate's advice and consent) and whose functions are transferred shall terminate.

Section 3484 establishes savings provisions, allowing actions, rules, suits, et cetera, to continue in effect as before any transfers.

Section 3485 changes any reference in law to the Secretary of Commerce, USTR, Department of Commerce, or Office of USTR, to the appropriate agency where the related functions were transferred.

Section 3486 provides that with the consent of the USTR or Secretary of Commerce, as appropriate, the head of each agency receiving transferred functions may utilize the personnel and funds related to such functions as needed for the orderly implementation of the chapter.

Subchapter H—Miscellaneous

Section 3491 sets an effective date for the chapter of 6 months after the date of enactment, except that at any time after enactment, the officers under subchapter B may be nominated and appointed. With approval of the Director of the OMB, funds available to the Department of Commerce and the USTR may be used for the compensation of such personnel.

Section 3492 allows the President, where an officer required to be appointed with the advice and consent of the Senate under this chapter has not entered office, to designate any officer so approved to act in such required office until it is otherwise filled, with compensation allowed at the rate for that office.

Section 3493 establishes that expenditures for this chapter for the fiscal year after enactment shall not exceed 75 percent of expenditures for related functions in fiscal year 1994. Within 90 days of enactment, the Director of the OMB shall consult with the USTR and report to Congress on a plan to implement this funding reduction, and any legislative recommendations for additional authorities useful to implement such reductions.

Chapter 5—Patent and Trademark Office Corporation

Section 3501 sets forth the title.

Subchapter A—Patent and Trademark Office

Section 3511 establishes the Patent and Trademark Office [PTO] as a wholly owned Government corporation with an office in the District of Columbia area for service of process and legal residency.

Section 3512 provides that the PTO shall be responsible for the granting and issuing of patents and registration of trademarks, conducting and authorizing studies on international patent and trademark law, and disseminating patent and trademark information to the public. The PTO shall have perpetual succession, shall create and use a corporate seal, may sue and be sued in its own name, may indemnify its officers and employees for liabilities within the scope of their employment, may promulgate regulatory changes governing the manner in which its business is conducted and its powers exercised, may transact property as necessary to carry out its functions, may contract after advertising with open bids where practicable, may use with consent the resources of other Federal agencies on a reimbursable basis, may obtain from the General Services Administrator such services as other agencies are provided, may use with consent the resources of State or local or foreign governments or organizations, may retain its own revenues and receipts and control its own expenses, retain payment priority in legal proceedings, accepts gifts to carry out its functions, execute appropriate instruments as necessary, provide for insurance for liability and property, and pay from its funds any judgments entered against it.

Section 3513 allows the President, with the advice and consent of the Senate, to appoint a Commissioner of Patents and Trademarks, who must be a U.S. citizen especially qualified by professional background and experience to manage the PTO. The Commissioner shall be responsible for managing and directing the PTO, and shall advise the President of all activities of the PTO undertaken in response to obligations of the United States under treaties, executive agreements, or foreign cooperative programs. The Commissioner shall also recommend changes in laws to improve the ability of U.S. citizens to secure or enforce globally patents and trademarks. The Commissioner shall consult with the Management Advisory Board on a regular basis, and before submitting budgetary proposals to the OMB or proposing fee or regulation changes. The Commissioner shall serve a term of 6 years, with reappointment possible, and may continue to serve beyond a term until a successor is appointed and assumes office. The Commissioner shall take an oath to faithfully perform all duties, shall be compensated at level II, may be removed from office by the President only for cause, and shall designate an officer to act in his absence or incapacity. The Commissioner shall appoint a Deputy Commissioner for Patents and a Deputy Commissioner for Trademarks for terms expiring with the Commissioner's, who shall have demonstrated experience in such fields, and shall be principal policy advisors to the Commissioner. The Commissioner shall also appoint an Inspector General and such other officers as necessary, and shall fix the authority and duties of such officers, without being subject to any administrative or statutory limitation on positions or personnel except where specifically referring to the PTO. No officer may receive compensation in excess of level III, and the Commissioner shall establish a limit on total compensation. All PTO personnel shall be carried over without break in service upon the transfer, with the Commissioner of Patents and Trademarks, the Assistant Commissioner for Patents, and the Assistant Commissioner for Trademarks before this Act allowed to serve for 1 year until the new appointments for such positions are made.

The PTO will adopt existing labor agreements for the shorter of their duration or 2 years after the effective date, and no individual during such 2-year period shall be subject to separation or reduction in compensation by reason of the transfer. All accrued leave shall be continued obligations of the PTO, at least one life insurance and three health insurance programs comparable to the Federal program shall be made available, and employees' termination rights and retirement rights shall be continued during such 2-year period as before. One year after the effective date, the PTO shall pay into the U.S. Treasury appropriate amounts for retired and retiring employees, based on the future cost of benefits payable and employee contributions made. All orders, rules, compensation agreements, etc, not otherwise specifically addressed shall remain in operation until modified by the PTO or operation of law.

Section 3514 creates a Patent and Trademark Office Management Advisory Board, consisting of 18 members: 6 appointed by the President, 6 by the Speaker of the House, and 6 by the President pro tempore of the Senate. Not more than four of the six members by each appointing authority shall be members of the same political party. Members terms shall be 6 years each, except for the first appointees whose terms shall be staggered. The President shall designate the Chair of the Board, who shall serve in such capacity for 3 years. Appointments shall be made within 3 months of the effective date, with vacancies filled within 3 months of occurring to fulfill the remainder of a term. A member may serve after an expired term until a successor is appointed. Members shall be citizens of the United States who shall be chosen to represent the PTO's diverse users, and shall include individuals with corporate finance and management background. Board members shall be special Government employees for purposes of certain ethics laws, and shall meet at the call of the chair, and shall review the policies, goals, performance, budget and fees of the PTO, and shall advise the Commissioner on these matters, and report within 60 days after each fiscal year on these matters to the President and the Congressional Judiciary Committees. The Board shall employ a staff as necessary to carry out its functions, who shall be employed and compensated under sole direction of the Board. Board members may receive reimbursement and compensation not to exceed $1,000 per day for each day in attendance in Board meetings. Members shall be provided access to all PTO records, except for personnel, privileged, and confidential patent information. The Federal Advisory Committee Act shall not apply to Board meetings, although such meetings shall be announced in the Federal Register at least 30 days in advance and open to the public unless closed for good cause.

Section 3515 removes the PTO from the Department of Commerce.

Section 3516 conforms the Trademark and Appeal Board under the Trademark Act of 1946.

Section 3517 creates a Board of Patent and Trademark Appeals and Interferences, made up of the Commissioner, Deputy Commissioners for Patent and Trademarks, the officers principally responsible for the examination of patents and trademarks, and the examiners-in-chief. This Board shall, on written appeal of an applicant, review adverse examiner decisions to determine priority and patentability of invention, with at least three members of the Board designated by the Commissioner to review each appeal and interference. Only the Board may grant rehearings.

Section 3518 allows for suits by and against the PTO, with exclusive jurisdiction in the Federal courts, with certain normal Federal limitations. The PTO may, without prior authorization by the Attorney General, exercise certain legal authority on behalf of its employees acting within the scope of their employment. In certain uncovered cases, the PTO must obtain authorization from the Attorney General before representing interested parties. Where the PTO is a named party to a suit, the Attorney General may file an appearance on behalf of the PTO or its employees without the consent of the PTO and have exclusive authority in the conduct of such suit. The Attorney General shall provide advice and assistance to the PTO, including representation where requested, and in all cases before the Supreme Court.

Section 3519 requires the Commissioner to report to Congress within 90 days after each fiscal year regarding the PTO's accounts and activities.

Section 3520 allows the Commissioner to designate any PTO employee to conduct a hearing on a suspension of license.

Section 3521 makes all fees for services or materials provided by the PTO directly payable to the PTO. PTO moneys not expended shall be kept in deposit or other lawful investments for fiduciary public funds. Fees relating to patents or trademarks shall be used exclusively for PTO activities related to patent or trademark matters, respectively. The PTO may issue for purchase by the Secretary of the Treasury various obligations not to exceed $2,000,000 in total to assist in financing its activities, such obligations pegged at market rates of comparable U.S. instruments.

Section 3522 directs PTO financial statements to be prepared annually by an independent certified public accountant chosen by the Secretary of the Treasury, conducted consistently with standards by the Comptroller and private sector. The Comptroller may review PTO's annual audit, and may perform an audit in lieu of the annual audit, with reimbursement by the PTO. The Comptroller shall have access to all office records necessary for such audit.

Section 3523 transfers to the PTO all functions vested in the Department and Secretary of Commerce relating to patent and trademark authority. The Commerce Secretary shall transfer to the PTO all of the Commerce Department's accounts related to the functions transferred to the PTO. Any residual and unappropriated balances remaining on the effective date within the Patent and Trademark Office Surcharge Fund established by the Omnibus Budget Reconciliation Act of 1990 are transferred to the PTO.

Subchapter B—Effective Date; Technical Amendments

Section 3531 establishes an effective date of 6 months after enactment.

Section 3532 contains conforming amendments.

Chapter 6—Miscellaneous Provisions

Section 3601 establishes that any references to an officer or office from which a function is transferred under subtitle F is deemed to refer to the head of the office or the agency to which such function is transferred.

Section 3602 provides that, except as otherwise specified by law, an official to whom a function is transferred shall exercise all legal authorities that were available to the official responsible for such function before the transfer.

Section 3603 sets forth savings provisions, continuing the effect of all proceedings, orders, obligations, privileges, etc., related to the performance of any functions transferred until altered by an authorized official or operation of law.

Section 3604 allows the Director of the OMB to transfer assets in connection with a transferred function.

Section 3605 allows an official to whom functions are transferred to delegate any functions, although such delegations will not relieve the official from responsibility for the administration of such functions.

Section 3606 allows the DCPRA Administrator to determine the transfer of functions, including any necessary incidental transfers of functions or assets. The Administrator shall further provide for the disposition of any affairs of all terminated entities.

Section 3607 requires the Director of the OMB to submit to Congress within 1 year of enactment a description of any changes in Federal law necessary to reflect the transfers and terminations of this subtitle.

Section 3608 deems the vesting of a function pursuant to the reestablishment of an office to be the transfer of such function.

Section 3609 sets forth definitions.

Section 3610 sets forth a 75-percent limit on annual expenditures for performance of transferred functions, based on fiscal year 1994 expenditures, excluding the Bureau of the Census and the Patent and Trademark Office.

Section 3611 requires the head of each agency to which a function is transferred to report to Congress within 6 months its recommendations for implementing user fees to offset operating costs for the provision of that function.

Section 3612 transfers any unobligated appropriations for functions transferred under this act to be returned to the general fund of the Treasury.

Section 3613 requires the Comptroller to report annually on any resulting costs to U.S. exporters of the transfer of BXA to the USTA and the 75-percent expenditure limitation. If the Comptroller finds that such costs have occurred, then the expenditure limit shall cease to apply to the transferred functions of the BXA.

Committee Consideration

On September 14, 1995, the committee met in open session and began consideration of subtitle F, Department of Commerce Abolition. On September 19, 1995, the committee again met in open session and ordered subtitle F, as amended, transmitted to the House Committee on the Budget for inclusion in the fiscal year 1996 Omnibus Budget Reconciliation Act, by a rollcall vote of 25 yeas to 19 nays.

ROLLCALL VOTES

Pursuant to clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, following are listed the recorded votes on the motion to order subtitle F transmitted to the House Committee on the Budget, and on amendments thereto, including the names of those members voting for and against.

ROLLCALL VOTE NO. 69

Bill: Committee print entitled ''Department of Commerce Abolition.''

Amendment: amendment to the Oxley amendment in the nature of a substitute by Mr. Klink re: eliminate the Economic Development Administration and create an Office of Economic Development and an economic development commission system.

Disposition: Not agreed to, by a rollcall vote of 16 yeas to 20 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley				Mr. Dingel	X		
Mr. Moorhead				Mr. Waxman	X		
Mr. Tauzin				Mr. Markey			
Mr. Fields				Mr. Wyden			
Mr. Oxley		X		Mr. Hall	X		
Mr. Bilirakis				Mr. Bryant	X		
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton		X		Mr. Manton	X		
Mr. Hastert		X		Mr. Towns	X		
Mr. Upton		X		Mr. Studds			
Mr. Stearns				Mr. Pallone			
Mr. Paxon		X		Mr. Brown	X		
Mr. Gillmor		X		Mrs. Lincoln	X		
Mr. Klug				Mr. Gordon	X		
Mr. Franks		X		Ms. Fuse	X		
Mr. Greenwood		X		Mr. Deutsch	X		
Mr. Crapo		X		Mr. Rush	X		
Mr. Cox		X		Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink	X		
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray		X					
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

ROLLCALL VOTE NO. 70

Bill: Committee print entitled "Department of Commerce Abolition."

Amendment: Amendment to the Oxley amendment in the nature of a substitute by Mrs. Lincoln re: transfer the functions of the U.S. Travel and Tourism Administration to another entity.

Disposition: Not agreed to, by a rollcall vote of 21 yeas to 21 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman	X		
Mr. Tauzin		X		Mr. Markey	X		
Mr. Fields				Mr. Wyden	X		
Mr. Oxley		X		Mr. Hall	X		
Mr. Bilirakis	X			Mr. Bryant	X		
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton		X		Mr. Manton	X		
Mr. Hastert				Mr. Towns	X		
Mr. Upton		X		Mr. Studds			
Mr. Stearns	X			Mr. Pallone	X		
Mr. Paxon				Mr. Brown	X		
Mr. Gillmor		X		Mrs. Lincoln	X		
Mr. Klug		X		Mr. Gordon	X		
Mr. Franks		X		Ms. Furse	X		
Mr. Greenwood		X		Mr. Deutsch			
Mr. Crapo		X		Mr. Rush	X		
Mr. Cox		X		Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink	X		
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray		X					
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn	X						

ROLLCALL VOTE NO. 71

Bill: Committee print entitled "Department of Commerce Abolition."

Amendment: Amendment, as amended by unanimous consent, to the Oxley amendment in the nature of a substitute by Mr. Bilbray re: retain the Global Change Program.

Disposition: Not agreed to, by a rollcall vote of 14 yeas to 25 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell		X	
Mr. Moorhead	X			Mr. Waxman	X		
Mr. Tauzin				Mr. Markey		X	
Mr. Fields				Mr. Wyden			
Mr. Oxley		X		Mr. Hall			
Mr. Bilirakis		X		Mr. Bryant		X	
Mr. Schaefer		X		Mr. Boucher		X	
Mr. Barton		X		Mr. Manton		X	
Mr. Hastert				Mr. Towns		X	
Mr. Upton	X			Mr. Studds			
Mr. Stearns	X			Mr. Pallone			
Mr. Paxon				Mr. Brown		X	
Mr. Gillmor	X			Mrs. Lincoln		X	
Mr. Klug	X			Mr. Gordon		X	
Mr. Franks	X			Ms. Furse		X	
Mr. Greenwood	X			Mr. Deutsch		X	
Mr. Crapo	X			Mr. Rush		X	
Mr. Cox	X			Ms. Eshoo		X	
Mr. Deal	X			Mr. Klink		X	
Mr. Burr		X		Mr. Stupak		X	
Mr. Bilbray	X						
Mr. Whitfield	X						
Mr. Ganske		X					
Mr. Frisa		X					

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn	X						

ROLLCALL VOTE NO. 72

Bill: Committee print entitled "Department of Commerce Abolition."

Amendment: Amendment to the Oxley amendment in the nature of a substitute by Mr. Markey re: preserve the Public Telecommunications Facilities Program and the Endowment for Children's Educational Television.

Disposition: Not agreed to, by a rollcall vote of 19 yeas to 20 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman	X		
Mr. Tauzin				Mr. Markey	X		
Mr. Fields				Mr. Wyden	X		
Mr. Oxley		X		Mr. Hall	X		
Mr. Bilirakis		X		Mr. Bryant	X		
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton		X		Mr. Manton	X		
Mr. Hastert				Mr. Towns	X		
Mr. Upton		X		Mr. Studds			
Mr. Stearns				Mr. Pallone			
Mr. Paxon				Mr. Brown	X		
Mr. Gillmor				Mrs. Lincoln	X		
Mr. Klug	X			Mr. Gordon	X		
Mr. Franks		X		Ms. Furse	X		
Mr. Greenwood		X		Mr. Deutsch	X		
Mr. Crapo		X		Mr. Rush	X		
Mr. Cox		X		Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink	X		
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray		X					
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

ROLLCALL VOTE NO. 73

Bill: Committee print entitled "Department of Commerce Abolition."

Amendment: Amendment to the Oxley amendment in the nature of substitute by Mr. Dingell re: retain the USTR intact.

Disposition: Not agreed to, by a rollcall vote of 17 yeas to 24 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman			
Mr. Tauzin		X		Mr. Markey	X		
Mr. Fields				Mr. Wyden	X		
Mr. Oxley		X		Mr. Hall	X		
Mr. Bilirakis		X		Mr. Bryant	X		

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton		X		Mr. Manton	X		
Mr. Hastert		X		Mr. Towns	X		
Mr. Upton		X		Mr. Studds			
Mr. Stearns				Mr. Pallone	X		
Mr. Paxon		X		Mr. Brown	X		
Mr. Gillmor		X		Mrs. Lincoln	X		
Mr. Klug				Mr. Gordon	X		
Mr. Franks		X		Ms. Furse	X		
Mr. Greenwood		X		Mr. Deutsch			
Mr. Crapo		X		Mr. Rush	X		
Mr. Cox		X		Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink	X		
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray		X					
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

ROLLCALL VOTE NO. 74

Bill: Committee print entitled "Department of Commerce Abolition."

Amendment: Amendment to the Oxley amendment in the nature of a substitute by Mr. Brown re: retain the domestic field offices of the U.S. and Foreign Commercial Service of the Department of Commerce.

Disposition: Not agreed to, by a rollcall vote of 14 yeas to 24 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman			
Mr. Tauzin				Mr. Markey			
Mr. Fields				Mr. Wyden	X		
Mr. Oxley		X		Mr. Hall			
Mr. Bilirakis		X		Mr. Bryant			
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton		X		Mr. Manton	X		
Mr. Hastert		X		Mr. Towns	X		
Mr. Upton		X		Mr. Studds			
Mr. Stearns		X		Mr. Pallone			
Mr. Paxon		X		Mr. Brown	X		
Mr. Gillmor		X		Mrs. Lincoln	X		
Mr. Klug		X		Mr. Gordon	X		
Mr. Franks		X		Ms. Furse	X		
Mr. Greenwood				Mr. Deutsch	X		
Mr. Crapo		X		Mr. Rush	X		
Mr. Cox		X		Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink	X		
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray		X					
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

ROLLCALL VOTE NO. 75

Bill: Committee print entitled “Department of Commerce Abolition.”

Amendment: Amendment to the Oxley amendment in the nature of a substitute by Mr. Dingell re: strike the provisions relating to limitations on annual expenditures.

Disposition: Not agreed to, by a rollcall vote of 18 yeas to 25 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman			
Mr. Tauzin		X		Mr. Markey	X		
Mr. Fields				Mr. Wyden	X		
Mr. Oxley		X		Mr. Hall	X		
Mr. Bilirakis		X		Mr. Bryant	X		
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton		X		Mr. Manton			
Mr. Hastert		X		Mr. Towns	X		
Mr. Upton		X		Mr. Studds	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Paxon		X		Mr. Brown	X		
Mr. Gillmor		X		Mrs. Lincoln	X		
Mr. Klug		X		Mr. Gordon	X		
Mr. Franks		X		Ms. Furse	X		
Mr. Greenwood				Mr. Deutsch	X		
Mr. Crapo		X		Mr. Rush	X		
Mr. Cox		X		Ms. Eshoo	X		
Mr. Deal		X		Mr. Klink	X		
Mr. Burr		X		Mr. Stupak	X		
Mr. Bilbray		X					
Mr. Whitfield		X					
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

ROLLCALL VOTE NO. 76

Bill: Committee print entitled “Department of Commerce Abolition.”

Motion: Motion by Mr. Bliley to order the committee print entitled “Department of Commerce Abolition” transmitted to the Committee on the Budget for inclusion in the fiscal year 1996 Omnibus Budget Reconciliation Act.

Disposition: Agreed to, by a rollcall vote of 25 yeas to 19 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Bliley	X			Mr. Dingell		X	
Mr. Moorhead	X			Mr. Waxman			
Mr. Tauzin	X			Mr. Markey		X	
Mr. Fields				Mr. Wyden		X	
Mr. Oxley	X			Mr. Hall			
Mr. Bilirakis	X			Mr. Bryant		X	
Mr. Schaefer	X			Mr. Boucher		X	
Mr. Barton	X			Mr. Manton		X	
Mr. Hastert	X			Mr. Towns		X	
Mr. Upton	X			Mr. Studds		X	
Mr. Stearns	X			Mr. Pallone		X	
Mr. Paxon	X			Mr. Brown		X	
Mr. Gillmor	X			Mrs. Lincoln		X	

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Klug	X	....	....	Mr. Gordon	....	X	....
Mr. Franks	X	....	....	Mrs. Furse	....	X	....
Mr. Greenwood	X	....	....	Mr. Deutsch	....	X	....
Mr. Crapo	X	....	....	Mr. Rush	....	X	....
Mr. Cox	X	....	....	Ms. Eshoo	....	X	....
Mr. Deal	X	....	....	Mr. Klink	....	X	....
Mr. Burr	X	....	....	Mr. Stupak	....	X	....
Mr. Bilbray	X	....	....				
Mr. Whitfield	....	X	....				
Mr. Ganske	X	....	....				
Mr. Frisa	X	....	....				
Mr. Norwood	X	....	....				
Mr. White	X	....	....				
Mr. Coburn	X	....	....				

COMMITTEE ON COMMERCE—104TH CONGRESS—VOICE VOTES

Bill: Committee print entitled "Department of Commerce Abolition."

Amendment: Amendment to the Oxley amendment in the nature of a substitute by Mr. Bilirakis re: to include hurricane tracking in the list of NOAA missions for which the Secretary of Agriculture is authorized to enter into contracts.

Disposition: Agreed to, by a voice vote.

Amendment: En bloc amendment to the Oxley amendment in the nature of a substitute by Mr. Gillmor re: technical corrections.

Disposition: Agreed to, by a voice vote.

Amendment: Amendment to the Oxley amendment in the nature of a substitute by Ms. Eshoo re: require GAO to submit an annual report on the losses incurred by U.S. exporters resulting from the transfer of functions of the Bureau of Export Administration and provide that if GAO finds that losses occurred, the annual expenditure limitation on the Bureau of Export Administration will be lifted.

Disposition: Agreed to, by a voice vote.

Amendment: Amendment to the Oxley amendment in the nature of a substitute by Mr. Franks re: sense of Congress that Congress should continue to explore the prospects for the private sector to assume responsibility for the functions and responsibilities of the Minority Business Development Administration.

Disposition: Agreed to, by a voice vote.

Amendment: Amendment to the Oxley amendment in the nature of a substitute by Mr. Markey re: transfer of all nonabolished NTIA functions to the U.S. Trade Administration.

Disposition: Agreed to, by a voice vote.

Amendment: En bloc amendment to the Oxley amendment in the nature of a substitute by Mr. White re: protection of international intellectual property rights.

Disposition: Agreed to, by a voice vote.

Amendment: Amendment to the Oxley amendment in the nature of a substitute by Mr. Stupak re: retain Great Lakes programs (Sea Grant Zebra Mussel Account and the Mussel Watch).

Disposition: Agreed to, by a voice vote.

Amendment: Amendment to the Oxley amendment in the nature of a substitute by Mr. Cox re: clarify that Commerce Programs Resolution Agency, the Federal Statistics Agency, and the U.S. Trade

Representative as an executive branch agency are to be considered as free-standing agencies.

Disposition: Agreed to, by a voice vote.

Amendment: Amendment to the Oxley amendment in the nature of a substitute by Mrs. Lincoln re: abolish the U.S. Travel and Tourism Administration on August 1, 1996, with report to Congress on privatizing its functions.

Disposition: Agreed to, by a voice vote.

Amendment: Amendment to the Oxley amendment in the nature of a substitute by Mr. Markey re: add a new section to amend the Rules of the House of Representatives.

Disposition: Withdrawn, by unanimous consent.

Amendment: Amendment in the nature of a substitute by Mr. Oxley, as amended.

Disposition: Agreed to, by a voice vote.

CHANGES IN EXISTING LAW MADE BY SUBTITLE F

Subtitle B—Patent and Trademark Office User Fees

SEC. 10101. PATENT AND TRADEMARK OFFICE USER FEES.

(a) * * *

(b) USE OF SURCHARGES.—Notwithstanding section 3302 of title 31, United States Code, beginning in fiscal year 1991, all surcharges collected by the Patent and Trademark Office—

(1) * * *

(2) in fiscal years 1992 through 1998—

(A) shall be credited to a separate account established in the Treasury and ascribed to the Patent and Trademark Office activities in the Department of Commerce as offsetting receipts, and

(B) shall be available only to the Patent and Trademark Office[, to the extent provided in appropriation Acts] *without appropriation*, for all authorized activities and operations of the office, including all direct and indirect costs of services provided by the office, and

(3) shall remain available until expended.

* * * * * * *

SECTION 19 OF TITLE 3, UNITED STATES CODE

* * * * * * *

§19. Vacancy in offices of both President and Vice President; officers eligible to act

(a) * * *

* * * * * * *

(d)(1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is no President pro tempore to act as President under subsection (b) of this section, then the officer of the United States who is highest on the following list, and who is not under disability to discharge the powers and duties of the office of President shall act as President: Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of the Interior, Secretary of Agriculture, ⟦Secretary of Commerce,⟧ *the United States Trade Representative,* Secretary of Labor, Secretary of Health and Human Services, Secretary of Housing and Urban Development, Secretary of Transportation, Secretary of Energy, Secretary of Education, Secretary of Veterans Affairs.

* * * * * * *

TITLE 5, UNITED STATES CODE

* * * * * * *

PART I—THE AGENCIES GENERALLY

CHAPTER 1—ORGANIZATION

§ 101. Executive departments

The Executive departments are:

The Department of State.

* * * * * * *

⟦The Department of Commerce.⟧

* * * * * * *

CHAPTER 5—ADMINISTRATIVE PROCEDURE

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SUBCHAPTER I—GENERAL PROVISIONS

§ 500. Administrative practice; general provisions

(a) * * *

* * * * * * *

(e) Subsections (b)–(d) of this section do not apply to practice before the ⟦Patent Office⟧ *Patent and Trademark Office* with respect to patent matters that continue to be covered by chapter 3 (sections 31–33) of title 35.

* * * * * * *

PART III—EMPLOYEES

* * * * * * *

Subpart D—Pay and Allowances

CHAPTER 51—CLASSIFICATION

* * * * * * *

§ 5102. Definitions; application

(a) * * *

* * * * * * *

(c) This chapter does not apply to—

(2) * * *

* * * * * * *

(23) examiners-in-chief and designated examiners-in-chief in the Patent and Trademark Office【, Department of Commerce】;

* * * * * * *

CHAPTER 53—PAY RATES AND SYSTEMS

* * * * * * *

SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

* * * * * * *

§ 5312. Positions at level I

Level I of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Secretary of State.

* * * * * * *

【Secretary of Commerce.】

* * * * * * *

【United States Trade Representative.】

United States Trade Representative, United States Trade Administration.

* * * * * * *

§ 5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Secretary of Defense.

* * * * * * *

Deputy Administrator of the United States Trade Administration.

Deputy United States Trade Representatives, United States Trade Administration (2).

Director General of Trade, United States Trade Administration (2).

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

[Under Secretary of Commerce, Under Secretary of Commerce for Economic Affairs, Under Secretary of Commerce for Export Administration and Under Secretary of Commerce for Travel and Tourism.]

* * * * * * *

[Under Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Administrator of the National Oceanic and Atmospheric Administration.]

* * * * * * *

[Under Secretary of Commerce for Technology.]

* * * * * * *

Assistant Administrators, United States Trade Administration (3).

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

* * * * * * *

[Assistant Secretaries of Commerce (11).]

* * * * * * *

[General Counsel of the Department of Commerce.]

* * * * * * *

[Assistant Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Deputy Administrator of the National Oceanic and Atmospheric Administration.]

* * * * * * *

[Director, National Institute of Standards and Technology, Department of Commerce.]

* * * * * * *

[Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service.]

[Inspector General, Department of Commerce.]

* * * * * * *

[Chief Financial Officer, Department of Commerce.]

* * * * * * *

[Director, Bureau of the Census, Department of Commerce.]

* * * * * * *

General Counsel, United States Trade Administration.

Inspector General, United States Trade Administration.

Chief Financial Officer, United States Trade Administration.

* * * * * * *

§ 5316. Positions at level V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Administrator, Bonneville Power Administration, Department of the Interior.

* * * * * * *

⟦Commissioner of Patents, Department of Commerce.⟧

* * * * * * *

⟦Director, United States Travel Service, Department of Commerce.⟧

* * * * * * *

⟦National Export Expansion Coordinator, Department of Commerce.⟧

* * * * * * *

⟦Deputy Commissioner of Patents and Trademarks.

⟦Assistant Commissioner of Patents.

⟦Assistant Commissioner for Trademarks.⟧

* * * * * * *

INSPECTOR GENERAL ACT OF 1978

* * * * * * *

REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

SEC. 8G. (a) Notwithstanding section 11 of this Act, as used in this section—

(1) * * *

(2) the term "designated Federal entity" means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, *the Patent and Trademark Office,* the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the Tennessee Valley Authority,

the United States International Trade Commission, and the United States Postal Service;

* * * * * * *

TRANSFER OF FUNCTIONS

SEC. 9. (a) There shall be transferred—

(1) to the Office of Inspector General—

(A) of the Department of Agriculture, the offices of that department referred to as the "Office of Investigation" and the "Office of Audit";

⟦(B) of the Department of Commerce, the offices of that department referred to as the "Office of Audits" and the "Investigations and Inspections Staff" and that portion of the office referred to as the "Office of Investigations and Security" which has responsibility for investigation of alleged criminal violations and program abuse;⟧

* * * * * * *

(X) of the United States Trade Representative, all functions of the Inspector General of the Department of Commerce and the Office of the Inspector General of the Department of Commerce relating to the functions transferred to the United States Trade Representative by section 3432 of the Department of Commerce Dismantling Act; and

* * * * * * *

DEFINITIONS

SEC. 11. As used in this Act—

(1) the term "head of the establishment" means the Secretary of Agriculture, ⟦Commerce,⟧ Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Labor, State, Transportation, or the Treasury; the Attorney General; *the United States Trade Representative;* the Administrator of the Agency for International Development, Environmental Protection, General Services, National Aeronautics and Space, or Small Business, or Veterans' Affairs; the Director of the Federal Emergency Management Agency, the Office of Personnel Management or the United States Information Agency; the Chairman of the Nuclear Regulatory Commission or the Railroad Retirement Board; the Chairperson of the Thrift Depositor Protection Oversight Board; the Chief Executive Officer of the Corporation for National and Community Service; the Administrator of the Community Development Financial Institutions Fund; and the chief officer of the Resolution Trust Corporation; or the Commissioner of Social Security, Social Security Administration; as the case may be;

(2) the term "establishment" means the Department of Agriculture, ⟦Commerce,⟧ Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, or the Treasury; *the United States Trade Administration,* the Agency for International Development, the Community Development Financial

Institutions Fund, the Environmental Protection Agency, the Federal Emergency Management Agency, the General Services Administration, the National Aeronautics and Space Administration, the Nuclear Regulatory Commission, the Office of Personnel Management, the Railroad Retirement Board, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Small Business Administration, the United States Information Agency, the Corporation for National and Community Service, or the Veterans' Administration, or the Social Security Administration; as the case may be;

* * * * * * *

PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1965

[AN ACT To provide grants for public works and development facilities, other financial assistance and the planning and coordination needed to alleviate conditions of substantial and persistent unemployment and underemployment in economically distressed areas and regions

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Public Works and Economic Development Act of 1965".

[STATEMENT OF PURPOSE

[SEC. 2. The Congress declares that the maintenance of the national economy at a high level is vital to the best interests of the United States, but that some of our regions, counties, and communities are suffering substantial and persistent unemployment cause hardship to many individuals and their families, and waste invaluable human resources; that to overcome this problem the Federal Government, in cooperation with the States, should help areas and regions of substantial and persistent unemployment and underemployment to take effective steps in planning and financing their public works and economic development; that Federal financial assistance, including grants for public works and development facilities to communities, industries, enterprises, and individuals in areas needing development should enable such areas to help themselves achieve lasting improvement and enhance the domestic prosperity by the establishment of stable and diversified local economies and improved local conditions, provided that such assistant is preceded by and consistent with sound, long-range economic planning; and that under the provisions of this Act new employment opportunities should be created by developing and expanding new and existing public works and other facilities and resources rather than by merely transferring jobs from one area of the United States to another. Congress further declares that, in furtherance of maintaining the national economy at a high level, the assistance authorized by this Act should be made available to both rural and urban areas; that such assistance be available for planning for economic development prior to the actual occurrences of economic distress in order to avoid such condition; and that such assistance be used for long-term economic rehabilitation in areas where long-term economic deterioration has occurred or is taking place.

⟦TITLE I—GRANTS FOR PUBLIC WORKS AND DEVELOPMENT FACILITIES

⟦SEC. 101. (a) Upon the application of any State, or political subdivision thereof, Indian tribe, or private or public nonprofit organization or association representing any redevelopment area or part thereof, the Secretary of Commerce (hereinafter referred to as the Secretary) is authorized—

⟦(1) to make direct grants for the acquisition or develoment of land and improvements for public works, public service, or development facility usage, and the acquisition, construction, rehabilitation, alteration, expansion, or improvement of such facilities, including related machinery and equipment, within a redevelopment area, if he finds that—

⟦(A) the project for which financial assistance is sought will directly or indirectly (i) tend to improve the opportunities, in the area where such project is or will be located, for the successful establishment or expansion of industrial or commercial plants or facilities, (ii) otherwise assist in the creation of additional long-term employment opportunities for such area, or (iii) primarily benefit the long-term unemployed and members of low-income families or otherwise substantially further the objectives of the Economic Opportunity Act of 1964;

⟦(B) the project for which a grant is requested will fulfill a pressing need of the area, or part thereof, in which it is, or will be, located;

⟦(C) the area for which a project is to be undertaken has an approved overall economic development program as provided in section 202(b)(10) and such project is consistent with such program; and

⟦(D) in the case of a redevelopment area so designated under section 401(a)(6), the project to be undertaken will provide immediate useful work to unemployed and underemployed persons in that area.

⟦(2) to make supplementary grants in order to enable the States and other entities within redevelopment areas to take maximum advantage of designated Federal grant-in-aid programs (as here-inafter defined), direct grants-in-aid authorized under this section, and Federal grant-in-aid programs authorized by the Watershed Protection and Flood Prevention Act (68 Stat. 666, as amended), and the eleven watersheds authorized by the Flood Control Act of December 22, 1944, as amended and supplemented (58 Stat. 887), for which they are eligible but for which, because of their economic situation, they cannot supply the required matching share.

⟦(b) Subject to subsection (c) hereof, the amount of any direct grant under this section for any project shall not exceed 50 per centum of the cost of such project.

⟦(c) The amount of any supplementary grant under this section for any project shall not exceed the applicable percentage established by regulations promulgated by the Secretary, but in no event shall the non-Federal share of the aggregate cost of any such project (including assumptions of debt) be less than 20 per centum of such cost, except that in the case of a grant to an Indian tribe, the Secretary may reduce the non-Federal share below such per centum or may waive the non-Federal share.

⟦In the case of any State or political subdivision thereof which the Secretary determines has exhausted its effective taxing and borrowing capacity, the Secretary shall reduce the non-Federal share below such per centum or shall waive the non-Federal share in the case of such a grant for a project in a redevelopment area designated as such under section 401(a)(6) of this Act.

⟦In case of any community development corporation which the Secretary determines has exhausted its effective borrowing capacity, the Secretary may reduce the non-Federal share below such per centum or waive the non-Federal share in the case of such a grant for a project in a redevelopment area designated as such under section 401(a)(6) of this Act.

⟦Supplementary grants shall be made by the Secretary, in accordance with such regulations as he shall prescribe, by increasing the amounts of direct grants authorized under this section or by the payment of funds appropriated under this Act to the heads of the departments, agencies, and instrumentalities of the Federal Government responsible for the administration of the applicable Federal programs.

⟦Notwithstanding any requirement as to the amount or sources of non-Federal funds that may otherwise be applicable to the Federal program involved, funds provided under this subsection shall be used for the sole purpose of increasing the Federal contribution to specific projects in redevelopment areas under such programs above the fixed maximum portion of the cost of such project otherwise authorized by the applicable law.

⟦The term "designated Federal grant-in-aid programs," as used in this subsection, means such existing or future Federal grant-in-aid programs assisting in the construction or equipping of facilities as the Secretary may, in furtherance of the purposes of this Act, designate as eligible for allocation of funds under this section.

⟦In determining the amount of any supplementary grant available to any project under this section, the Secretary shall take into consideration the relative needs of the area, the nature of the projects to be assisted, and the amount of such fair user charges or other revenues as the project may reasonably be expected to generate in excess of those which would amortize the local share of initial costs and provide for its successful operation and maintenance (including depreciation).

⟦(d) The Secretary shall prescribe rules, regulations, and procedures to carry out this section which will assure that adequate consideration is given to the relative needs of eligible areas. In prescribing such rules, regulations, and procedures the Secretary shall consider among other relevant factors (1) the severity of the rates of unemployment in the eligible areas and the duration of such unemployment and (2) the income levels of families and the extent of underemployment in eligible areas.

⟦(f) The Secretary shall prescribe regulations which will assure that appropriate local governmental authorities have been given a reasonable opportunity to review and comment upon proposed projects under this section.

⟦SEC. 102. For each of the fiscal years ending June 30, 1975, June 30, 1976, September 30, 1977, September 30, 1978, September 30, 1979, September 30, 1980, September 30, 1981, and September 30, 1982, not to exceed $30,000,000 of the funds authorized to be appropriated under section 105 of this Act for each such fiscal year, and for the period beginning July 1, 1976, and ending September 30, 1976, not to exceed $7,500,000 of the funds authorized to be appropriated under such section 105 for such period, shall be available for grants for operation of any health project funded under this title after the date of enactment of this section. Such grants may be made up to 100 per centum of the estimated cost of the first year of operation, and up to 100 per centum of the deficit in funds available for operation of the facility during the second fiscal year of operation. No grant shall be made for the second fiscal year of operation of any facility unless the agency operating such facility has adopted a plan satisfactory to the Secretary of Health, Education, and Welfare, providing for the funding of operations on a permanent basis. Any grant under this section shall be made upon the condition that the operation of the facility will be conducted under efficient management practices designed to obviate operating deficits, as determined by the Secretary of Health, Education, and Welfare.

⟦SEC. 103. Not more than 15 per centum of the appropriations made pursuant to this title may be expended in any one State.

⟦SEC. 105. There is hereby authorized to be appropriated to carry out this title not to exceed $500,000,000 for the fiscal year ending June 30, 1966, and for each fiscal year thereafter through fiscal year ending June 30, 1971, not to exceed $800,000,000 per fiscal year for the fiscal years ending June 30, 1972, and June 30, 1973, not to exceed $200,000,000 for the fiscal year ending June 30, 1974, and not to exceed $200,000,000 for the fiscal year ending June 30, 1975, and not to exceed $250,000,000 for the fiscal year ending June 30, 1976, not to exceed $62,500,000 for the period beginning July 1, 1976, and ending September 30, 1976, and not to exceed $425,000,000 per fiscal year for the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, September 30, 1980, and September 30, 1981, and not to exceed $150,000,000 for the fiscal year ending September 30, 1982. Any amounts authorized for the fiscal year ending June 30, 1972, under this section but not appropriated may be appropriated for the fiscal year ending June 30, 1973. Not less than 25 per centum nor more than 35 per centum of all appropriations made for the fiscal years ending June 30, 1972, June 30, 1973, and June 30, 1974, and not less than 15 per centum nor more than 35 per centum of all appropriations made for the fiscal years ending June 30, 1975 and June 30, 1976, the period beginning July 1, 1976, and ending September 30, 1976, and the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, September 30, 1980, September 30, 1981, and September 30, 1982, under authority of the preceding sentences shall be expended in redevelopment areas designated as such under section 401(a)(6) of this Act.

⟦FINANCIAL ASSISTANCE FOR SEWER FACILITIES

⟦SEC. 106. No financial assistance, through grants, loans, guarantees, or otherwise, shall be made under this Act to be used directly or indirectly for sewer or other waste disposal facilities unless the Secretary of Health, Education, and Welfare certifies to the Secretary that any waste material carried by such facilities will be adequately treated before it is discharged into any Public waterway so as to meet applicable Federal, State, interstate, or local water quality standards.

⟦CONSTRUCTION COST INCREASES

⟦SEC. 107. In any case where a grant (including a supplemental grant) has been made under this title for a project and after such grant has been made but before completion of the project, the cost of such project based upon the designs and specifications which were the basis of the grant has been increased because of increases in costs, the amount of such grant may be increased by an amount equal to the percentage increase, as determined by the Secretary, in such costs, but in no event shall the percentage of the Federal share of such project exceed that originally provided for in such grant.

⟦TITLE II—OTHER FINANCIAL ASSISTANCE

⟦PUBLIC WORKS AND DEVELOPMENT FACILITY LOANS

⟦SEC. 201. (a) Upon the application of any State, or political subdivision thereof, Indian tribe, or private or public nonprofit organization or association representing any redevelopment area or part thereof, the Secretary is authorized to purchase evidence of indebtedness and to make loans to assist in financing the purchase or development of land and improvements for public works, public service, or development facility usage, including public works, public service, or development facility usage, to be provided by agencies of the Federal Government pursuant to legislation requiring that non-Federal entities bear some part of the cost thereof, and the acquisition, construction, rehabilitation, alteration, expansion, or improvement of such facilities, including related machinery and equipment, within a redevelopment area, if he finds that—

⟦(1) the project for which financial assistance sought will directly or indirectly—

⟦(A) tend to improve the opportunities, in the area where such project is or will be located, for the successful establishment or expansion of industrial or commercial plants or facilities,

⟦(B) otherwise assist in the creation of additional long-term employment opportunities for such area, or

⟦(C) primarily benefit the long-term unemployed and members of low-income families or otherwise substantially further the objectives of the Economic Opportunity Act of 1964;

⟦(2) the funds requested for such project are not otherwise available from private lenders or from other Federal agencies on terms which in the opinion of the Secretary will permit the accomplishment of the project;

⟦(3) the amount of the loan plus the amount of other available funds for such project are adequate to insure the completion thereof;

⟦(4) there is a reasonable expectation of repayment; and

⟦(5) such area has an approved overall economic development program as provided in section 202(b)(10) and the project for which financial assistance is sought is consistent with such program.

⟦(b) Subject to section 710(5), no loan, including renewals or extensions thereof, shall be made under this section for a period exceeding forty years, and no evidence of indebtedness maturing more than forty years from the date of purchase shall be purchased under this section. Such loans shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eight of 1 per centum, less not exceed one-half of 1 per centum per annum.

⟦(c) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section and section 202, except that annual appropriations for the purposes of purchasing evidence of indebtedness, paying interest supplement to or on behalf of private entities making and participating in loans, and guaranteeing loans, shall not exceed $170,000,000 for the fiscal year ending June 30, 1966, and for each fiscal year thereafter through the fiscal year ending June 30, 1973, and shall not exceed $55,000,000 for the fiscal year ending June 30, 1974, and shall not exceed $75,000,000 for the fiscal years ending June 30, 1975, and June 30, 1976, and shall not exceed $18,750,000 for the period beginning July 1, 1976, and ending September 30, 1976, and shall not exceed $200,000,000 per fiscal year for the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, September 30, 1980, and September 30, 1981, and not to exceed $46,500,000 for the fiscal year ending September 30, 1982.

⟦(e) The Secretary shall prescribe regulations which will assure that appropriate local governmental authorities have been given a reasonable opportunity to review and comment upon proposed projects under this section.

⟦LOANS AND GUARANTEES

⟦SEC. 202. (a)(1) The Secretary is authorized to aid in financing, within a redevelopment area, the purchase or development of land and facilities (including machinery and equipment) for industrial or commercial usage, including the construction of new buildings, the rehabilitation of abandoned or unoccupied buildings, and the alteration, conversion, or enlargement of existing buildings by (A) purchasing evidences of indebtedness, (B) making loans (which for purposes of this section shall include participation in loans). (C) guaranteeing loans made to private borrowers by private lending institutions, for any of the purposes referred to in this paragraph upon application of such institution and upon such terms and conditions as the Secretary may prescribe, except that no such guarantee shall at any time exceed 90 per centum of the amount of the outstanding unpaid balance of such loan.

[(2) In addition to any other financial assistance under this title, the Secretary is authorized, in the case of any loan guarantee under authority of paragraph (1) of this section, to pay to or on behalf of the private borrower an amount sufficient to reduce up to 4 percentage points the interest paid by such borrower on such guaranteed loans. No payment under this paragraph shall result in the interest rate being paid by a borrower on such a guaranteed loan being less than the rate of interest for such a loan if it were made under section 201 of this Act. Payment made to or on behalf of such borrower shall be made no less often than annually.

[(3) The Secretary is authorized to aid in financing any industrial or commercial activity within a redevelopment area by (A) making working capital loans, (B) guaranteeing working capital loans made to private borrowers by private lending institutions upon application of such institution and upon such terms and conditions as the Secretary may prescribe, except that no such guarantee shall at any time exceed 90 per centum of the amount of the outstanding unpaid balance of such loan, (C) guaranteeing rental payment of leases for buildings and equipment, except that no such guarantee shall exceed 90 per centum of the remaining rental payments required by the lease, (D) paying those debts with respect to which a lien against property has been legally obtained (including the refinancing of any such debt) in any case where the Secretary determines that it is essential to do so in order to save employment in a designated area, to avoid a significant rise in unemployment, or to create new or increased employment.

[(b) Financial assistance under this section shall be on such terms and conditions as the Secretary determines, subject, however, to the following restrictions and limitations:

[(1) Such financial assistance shall not be extended to assist establishments relocating from one area to another or to assist subcontractors whose purpose is to divest, or whose economic success is dependent upon divesting, other contractors or subcontractors of contracts theretofore customarily performed by them: *Provided, however,* That such limitations shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the Secretary finds that the establishment of such branch, affiliate, or subsidiary will not result in increase in unemployment of the area of original location or in any other area where such entity conducts business operations, unless the Secretary has reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

[(2) Such assistance shall be extended only to applicants, both private and public (including Indian tribes), which have been approved for such assistance by an agency or instrumentality of the State or political subdivision thereof in which the project to be financed is located, and which agency or instrumentality is directly concerned with problems of economic development in such State or subdivision.

[(3) The project for which financial assistance is sought must be reasonably calculated to provide more than a temporary alleviation of unemployment or underemployment within the redevelopment area wherein it is or will be located.

[(4) No loan or guarantee shall be extended hereunder unless the financial assistance applied for is not otherwise available from private lenders or from other Federal agencies on terms which in the opinion of the Secretary will permit the accomplishment of the project.

[(5) The Secretary shall not make any loan without a participation unless he determines that the loan cannot be made on a participation basis.

[(6) No evidence of indebtedness shall be purchased and no loans shall be made or guaranteed unless it is determined that there is reasonable assurance of repayment.

[(7) Subject to section 701(5) of this Act, no loan or guarantee, including renewals or extension thereof, may be made hereunder for a period exceeding twenty-five years and no evidences of indebtedness maturing more than twenty-five years from date of purchase may be purchased hereunder: *Provided*, That the foregoing restrictions on maturities shall not apply to securities or obligations received by the Secretary as a claimant in bankruptcy or equitable reorganization or as a creditor in other proceedings attendant upon insolvency of the obligor.

[(8) Loans made and evidences if indebtedness purchased under this section shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus additional charge, if any, toward covering other costs of the program as the Secretary may determine to be consistent with its purpose.

[(9) Loan assistance (other than for a working capital loan) shall not exceed 65 per centum of the aggregate cost to the applicant (excluding all other Federal aid in connection with the undertaking) of acquiring or developing land and facilities (including machinery and equipment), and of constructing, altering, converting, rehabilitating, or enlarging the building or buildings of the particular project, and shall, among others, be on the condition that—

[(A) other funds are available in an amount which together with the assistance provided hereunder, shall be sufficient to pay such aggregate cost;

[(B) not less than 15 per centum of such aggregate cost be supplied as equity capital or as a loan repayable in no shorter period of time and at no faster an amortization rate than the Federal financial assistance extended under this section is being repaid, and if such a loan is secured, its security shall be subordinate and inferior to the lien or liens securing such Federal financial assistance: *Provided, however*, That, except in projects involving financial participation by Indian tribes, not less than 5 per centum of such aggregate cost shall be supplied by the State or any agency, instrumentality, or political subdivision thereof, or by a community or area organization which is nongovernmental in character, unless the Secretary shall determine in accordance with the objective standards promulgated by regulation that all or part of such funds are not reasonably available to the project because of the economic distress of the area or for other good cause, in which case he may waive the requirement of this provision to the extent of such unavailability, and allow the funds required by this subsection to be supplied by the applicant or by such other non-Federal source as may reasonably be available to the project;

[(C) to the extent the Secretary finds such action necessary to encourage financial participation in a particular project by other lenders and investors, and except as otherwise provided in subparagraph (B), any Federal financial assistance extended under this section may be repayable only after other loans made in connection with such project have been repaid in full, and the security, if any, for such Federal financial assistance may be subordinate and inferior to the lien or liens securing other loans made in connection with the same project.

[(10) No such assistance shall be extended unless there shall be submitted to and approval of the Secretary an overall program for the economic development of the area and a finding by the State, or any agency, instrumentality, or local political subdivision thereof, that the project for which financial assistance is sought is consistent with such program: *Provided,* That nothing in this Act shall authorize financial assistance for any project prohibited by laws of the State or local political subdivision in which the project would be located, nor prevent the Secretary from requiring such periodic revisions of previously approved overall economic development programs as he may deem appropriate.

[ECONOMIC DEVELOPMENT FUNDS

[SEC. 203. Funds obtained by the Secretary under section 201; loan funds obtained under section 403, and collections and repayments received under this Act, shall be deposited in an economic development revolving fund (hereunder referred to as the "fund"), which is hereby established in the Treasury of the United States, and which shall be available to the Secretary for the purpose of extending financial assistance under sections 201, 202, and 403, and for the payment of all obligations and expenditures arising in connection therewith. There shall also be credited to the fund such funds as have been paid into the area development fund or may be received from obligations outstanding under the Area Redevelopment Act. The fund shall pay into miscellaneous receipts of the Treasury, following the close of each fiscal year, interest on the amount of loans outstanding under this Act computed in such manner and at such rate as may be determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, during the month of September preceding the fiscal year in which the loans were made.

⟦REDEVELOPMENT AREA LOAN PROGRAM

⟦SEC. 204. (a) If a redevelopment area prepares a plan for the redevelopment of the area or a part thereof and submits such plan to the Secretary for his approval and the Secretary approves such plan, the Secretary is authorized to make an interest free loan to such area for the purpose of carrying out such plan. Such plan may include industrial land assembly, land banking, acquisition of surplus government property, acquisition of industrial sites including acquisition of abandoned properties with redevelopment potential, real estate development including redevelopment and rehabilitation of historical buildings for industrial and commerical use, rehabilitation and renovation of usable empty factory buildings for industrial and commerical use, and other investments which will accelerate recycling of land and facilities for job creating economic activity. Any such interest free loan shall be made on condition (1) that the area will use such interest free loan to make loans to carry out such plan, (2) the repayment of any loan made by the area from such interest free loan shall be placed by such area in a revolving fund available solely for the making of other loans by the area, upon approval by the Secretary, for the economic redevelopment of the area. Any such interest free loan shall be repaid to the United States by a redevelopment area whenever such area has its designation as a redevelopment area terminated or modified under section 402 of this Act. This section shall not apply to any redevelopment area whose designation as a redevelopment area would be terminated or modified under section 402 of this Act except for the provisions of section 2 of the Act entitled "An Act to amend the Public Works and Economic Development Act of 1965 to extend the authorizations for title I through IV through fiscal year 1971", approved July 6, 1970 (P.L. 91–304).

⟦(b)(1) Each eligible recipient which receives assistance under this section shall annually during the period such assistance continues make a full and complete report to the Secretary, in such manner as the Secretary shall prescribe, and such report shall contain an evaluation of the effectiveness of the economic assistance provided under this section in meeting the need it was designed to alleviate and the purposes of this section.

⟦(2) The Secretary shall include in the annual report pursuant to section 707 of this Act a consolidated report with his recommendations, if any, on the assistance authorized under this section, in a form which he deems appropriate.

⟦(c) There is authorized to be appropriated to carry out this section not to exceed $125,000,000 per fiscal year for the fiscal years ending September 30, 1977, and September 30, 1979, September 30, 1980, and September 30, 1981.

⟦TITLE III—TECHNICAL ASSISTANCE, RESEARCH, AND INFORMATION

⟦SEC. 301. (a) In carrying out his duties under this Act the Secretary is authorized to provide technical assistance which would be useful in alleviating or preventing conditions of excessive unemployment or underemployment (1) to areas which he has designated as redevelopment areas under this Act, and (2) to other areas which he finds have substantial need for such assistance. Such assistance shall include project planning and feasibility studies, management and operational assistance, and studies evaluating the needs of, and development potentialities for, economic growth of such areas. Such assistance may be provided by the Secretary through members of his staff, through the payment of funds authorized for this section to other departments or agencies of the Federal Government, through the employment of private individuals, partnerships, firms, corporations, or suitable institutions, under contracts entered into for such purposes, or through grants-in-aid to appropriate public or private nonprofit State, area, district, or local organizations. The Secretary, in his discretion, may require the repayment of assistance provided under this subsection and prescribe the terms and conditions of such repayment.

⟦(b) The Secretary is authorized to make grants to defray not to exceed 75 per centum of the administrative expenses of organizations which he determines to be qualified to receive grants-in-aid under subsection (a) hereof, except that in the case of a grant under this subsection to an Indian tribe the Secretary is authorized to defray up to 100 per centum of such expenses. In determining the amount of the non-Federal share of such costs or expenses, the Secretary shall give due consideration to all contributions both in cash and in kind, fairly evaluated, including but not limited to space, equipment, and services. Where practicable grants-in-aid authorized under this subsection shall be used in conjunction with other available planning grants, such as urban planning grants, authorized under the Housing Act of 1954, as amended, and highway planning and research grants authorized under the Federal-aid Highway Act of 1962, to assure adequate and effective planning and economical use of funds.

⟦(c) To assist in the long-range accomplishment of the purposes of this Act, the Secretary, in cooperation with other agencies having similar functions, shall establish and conduct a continuing program of study, training, and research to (A) assist in determining the causes of unemployment, underemployment, underdevelopment, and chronic depression in the various areas and regions of the Nation, (B) assist in the formulation and implementation of national, State, and local programs which will raise income levels and otherwise produce solutions to the problems resulting from these conditions, and (C) assist in providing the personnel needs to conduct such programs. The program of study, training, and research may be conducted by the Secretary through members of his staff, through payment of funds authorized for this section to other departments or agencies of the Federal Government, or through the employment of private individuals, partnerships, firms, corporations, or suitable institutions, under contracts entered into for such purposes, or through grants to such individuals, organizations, or institutions, or through conferences, and similar meetings organized for such purposes. The Secretary shall make available to interested individuals and organizations the results of such research. The Secretary shall include in his annual report under section 707 a detailed statement concerning the study and research conducted under this section together with his findings resulting therefrom and his recommendations for legislative and other action.

⟦(d) The Secretary shall aid redevelopment areas and other areas by furnishing to interested individuals, communities, industries, and enterprises within such areas any assistance, technical information, market research, or other forms of assistance, information, or advice which would be useful in alleviating or preventing conditions of excessive unemployment or underemployment within such areas. The Secretary may furnish the procurement divisions of the various departments, agencies, and other instrumentalities of the Federal Government with a list containing the names and addresses of business firms which are located in redevelopment areas and which are desirous of obtaining Government contracts for the furnishing of supplies or services, and designating the supplies and services such firms are engaged in providing.

⟦(e) The Secretary shall establish an independent study board consisting of governmental and on governmental experts to investigate the effects of Government procurement, scientific, technical, and other related policies, upon regional economic development. Any Federal officer or employee may, with the consent of the head of the department or agency in which he is employed, serve as a member of such board, but shall receive no additional compensation for such service. Other members of such board may be compensated in accordance with the provisions of section 701(10). The board shall report its findings, together with recommendations for the better coordination of such policies, to the Secretary, who shall transmit the report to the Congress not later than two years after the enactment of this Act.

⟦(f) The Secretary is authorized to make grants, enter into contracts or otherwise provide funds for any demonstration project within a redevelopment area or areas which he determines is designed to foster regional productivity and growth, prevent out migration, and otherwise carry out the purposes of this Act.

⟦SEC. 302. (a) The Secretary is authorized, upon application of any State, or city, or other political subdivision of a State, or sub-State planning and development organization (including a redevelopment area or an economic development district), to make direct grants to such State, city, or other political subdivision, or organization to pay up to 80 per centum of the cost for economic development planning. The planning for cities, other political subdivisions, and sub-State planning and development organizations (including redevelopment areas and economic development districts) assisted under this section shall include systematic efforts to reduce unemployment and increase incomes. Such planning shall be a continuous process involving public officials and private citizens in analyzing local economics, defining development goals, determining project opportunities, and formulating and implementing a development program. Any overall State economic development plan prepared with assistance under this section shall be prepared cooperatively by the State, its political subdivisions, and the economic development districts located in whole or in part within such State. Upon completion of any such plan, the State shall certify to the Secretary (1) that in the preparation of such State plan, the local and economic development district plans were considered and, to the fullest extent possible, such State plan is consistent with such local and economic development district plans, and (2) that such

State plan is consistent, with such local and economic development district plans, or, if such State plan is not consistent with such local and economic development district plans, all of the inconsistencies of the State plan with the local and economic development district plans, and the justification for each of these inconsistencies. Any overall State economic development planning shall be a part of a comprehensive planning process that shall consider the provision of public works to stimulate and channel development, economic opportunities and choices for individuals; to support sound land use, to enhance and protect the environment including the conservation and preservation of open spaces and environmental quality, to provide public services, and to balance physical and human resources through the management and control of physical development. The assistance available under this section may be provided in addition to assistance available under section 301(b) of this Act but shall not supplant such assistance and shall be available to develop an annual inventory of specific recommendations for assistance under section 304 of this Act. Each State receiving assistance under this subsection shall submit to the Secretary an annual report on the planning process assisted under this subsection.

⟦(b) In addition, the Secretary is authorized to assist economic development districts in—

⟦(1) providing technical assistance (other than by grant) to local governments within the district; and

⟦(2) carrying out any review procedure required pursuant to title IV of the Intergovernmental Cooperation Act of 1968, if such district has been designated as the agency to conduct such review.

⟦(c) The planning assistance authorized under this title shall be used in accordance with the review procedure required pursuant to title IV of the Intergovernmental Cooperation Act of 1968 and shall be used in conjunction with any other available Federal planning assistance to assure adequate and effective planning and economical use of funds.

⟦SEC. 303. (a) There is hereby authorized to be appropriated $25,000,000 annually for the purposes of Sections 301 and 302 of this Act, for the fiscal year ending June 30, 1966, and for each fiscal year thereafter through the fiscal year ending June 30, 1969, $50,000,000 per fiscal year for the fiscal years ending June 30, 1970, June 30, 1971, June 30, 1972, and June 30, 1973, and $35,000,000 for the fiscal year ending June 30, 1974 and $75,000,000 per fiscal year for the fiscal years ending June 30, 1975, and June 30, 1976, $18,750,000 for the period beginning July 1, 1976, and ending September 30, 1976, and $75,000,000 per fiscal year for the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, September 30, 1980, and September 30, 1981, and not to exceed $35,500,000 for the fiscal year ending September 30, 1982.

⟦(b) Not to exceed $15,000,000 in each of the fiscal years ending June 30, 1975, and June 30, 1976. September 30, 1977, September 30, 1978, September 30, 1979, September 30, 1980, September 30, 1981, and September 30, 1982, of the sums authorized to be appropriated under subsection (a) of this section, shall be available to make grants to States.

⟦SUPPLEMENTAL AND BASIC GRANTS

⟦SEC. 304. (a) There are hereby authorized to be appropriated $35,000,000 for the fiscal year ending June 30, 1975, and $75,000,000 for the fiscal year ending June 30, 1976, $18,750,000 for the period beginning July 1, 1976, and ending September 30, 1976, and $75,000,000 per fiscal year for the fiscal year ending September 30, 1977, September 30, 1978, September 30, 1979, September 30, 1980, and September 30, 1981, for apportionment by the Secretary among the States for the purpose of supplementing or making grants and loans authorized under titles I, II, III (other than planning grants authorized under sections 301(b) and 302), IV, and IX of this Act. Such funds shall be apportioned among the States in the ratio which all grants made under title I of this Act since August 26, 1965, in each State bear to the total of all such grants made in all the States since August 26, 1965.

⟦(b) Funds apportioned to a State pursuant to subsection (a) shall be available for supplementing or making such grants or loans if the State makes a contribution of at least 25 per centum of the amount of such grant or loan in each case. Funds apportioned to a State under subsection (a) shall remain available to such State until obligated or expended by it.

⟦(c) Funds apportioned to a State pursuant to this section may be used by the Governor in supplementing grants or loans with respect to any project or assistance authorized under title I, II, III (other than planning grants authorized under sections 301(b) and 302), IV, or IX of this Act, and approved by the Secretary after July 1, 1974. Such grants may be used to reduce or waive the non-Federal share otherwise required by this Act, subject to the requirements of subsection (b) of this section.

⟦(d) In the case of any grant or loan for which all or any portion of the basic Federal contribution to the project under this Act is proposed to be made with funds available under this section, no such Federal contribution shall be made until the Secretary of Commerce certifies that such project meets all of the requirements of this Act and could be approved for Federal contributions under this Act if funds were available under this Act (other than section 509) for such project. Funds may be provided for projects in a State under this section only if the Secretary determines that the level of Federal and State financial assistance under this Act (other than section 509) and under Acts other than this Act, for the same type of projects in the State, will not be diminished in order to substitute funds authorized by this section.

⟦(e) After June 30, 1975, funds apportioned to a State pursuant to this section shall be used by the Governor in a manner which is consistent with the State planning process assisted under section 302 of this Act, if such planning process has been established in such State.

⟦TITLE IV—AREA AND DISTRICT ELIGIBILITY

⟦PART A—REDEVELOPMENT AREAS

⟦AREA ELIGIBILITY

⟦SEC. 401. (a) The Secretary shall designate as "redevelopment areas"—

⟦(1) those areas in which he determines, upon the basis of standards generally comparable with those set forth in paragraphs (A) and (B), that there has existed substantial and persistent unemployment for an extended period of time and those areas in which he determines there has been a substantial loss of population due to lack of employment opportunity. There shall be included among the areas so designated any area—

⟦(A) where the Secretary of Labor finds that the current rate of unemployment, as determined by appropriate annual statistics for the most recent twelve consecutive months, is 6 per centum or more and has averaged at least 6 per centum for the qualifying time periods specified in paragraph (B); and

⟦(B) where the Secretary of Labor finds that the annual average rate of unemployment has been at least—

⟦(i) 50 per centum above the national average for three of the preceding four calendar years, or

⟦(ii) 75 per centum above the national average for two of the preceding three calendar years, or

⟦(iii) 100 per centum above the national average for one of the preceding two calendar years.

The Secretary of Labor shall find the facts and provide the data to be used by the Secretary in making the determinations required by this subsection;

⟦(2) those additional areas which have a median family income not in excess of 50 per centum of the national median, as determined by the most recent available statistics for such areas;

⟦(3) those additional Federal or State Indian reservations or trust or restricted Indian-owned land areas which the Secretary, after consultation with the Secretary of the Interior or an appropriate State agency, determines manifest the greatest degree of economic distress on the basis of unemployment and income statistics and other appropriate evidence of economic underdevelopment; *Provided, however,* That uninhabited Federal or State Indian reservations or trust or restricted Indian-owned land areas may be designated where such designation would permit assistance to Indian tribes, with a direct beneficial effect on the economic well-being of Indians;

⟦(4) upon request of such areas, those additional areas in which the Secretary detemines that the loss, removal, curtailment, or closing of a major source of employment has caused within three years prior to, or threatens to cause within three years after, the date of the request an unusual and abrupt rise in unemployment of such magnitude that the unemployment rate for the area at the time of the request exceeds the national average, or can reasonably be expected to exceed the national average, by 50 per centum or more unless assistance is provided. Notwithstanding any provision of subsection 401(b) to the contrary, an area designated under the authority of this paragraph may be given a reasonable time after designation in which to submit the overall economic development program required by subsection 202(b)(10) of this Act;

⟦(5) notwithstanding any provision of this section to the contrary, those additional areas which were designated redevelopment areas under the Area Redevelopment Act on or after March 1, 1965; *Provided, however,* That the continued eligibility of such areas after the first annual review of eligibility conducted in accordance with section 402 of this Act shall be dependent on their qualification for designation under the standards of economic need set forth in subsections (a)(1) through (a)(4) of this section;

⟦(6) those communities or neighborhoods (defined without regard to political or other subdivisions or boundaries) which the Secretary determines have one of the following conditions:

⟦(A) a large concentration of low-income persons;

⟦(B) rural areas having substantial outmigration;

⟦(C) substantial unemployment; or

⟦(D) an actual or threatened abrupt rise of unemployment due to the closing or curtailment of a major source of employment.

No redevelopment area established under this paragraph shall be subject to the requirements of subparagrphs (A) and (C) of paragraph (1) of subsection (a) of section 101 of this Act. No redevelopment area established under this paragraph shall be eligible to meet the requirements of section 403(a)(1)(B) of this Act;

⟦(7) those areas where per capita employment has declined significantly during the next preceding ten-year period for which appropriate statistics are available;

⟦(8) those areas which the Secretary of Labor determines, on the basis of average annual available unemployment statistics, to have experienced unemployment which is both substantial and above the national average for the preceding twenty-four months;

⟦(9) those areas which the Secretary determines have demonstrated long-term economic deterioration.

(b) The size and boundaries of redevelopment areas shall be as determined by the Secretary: *Provided, however,* That—

⟦(1) no area shall be designated until it has an approved overall economic development program in accordance with subsection 202(b)(10) of this Act;

⟦(2) any area which does not submit an acceptable overall economic development program in accordance with subsection 202(b)(10) of this Act within the reasonable time after notification of eligibility for designation, shall not thereafter be designated prior to the next annual review of elibility in accordance with section 402 of this Act;

⟦(3) no area shall be designated which does not have a population of at least one thousand five hundred persons, except that this limitation shall not apply to any area designated under section 401 (a)(3) or (a)(6); and.

[(4) except for areas designated under subsections (a)(3), (a)(4) and (a)(6) hereof, no area shall be designated which is smaller than a ''labor area'' (as defined by the Secretary of Labor), a country, or municipality with a population of over twenty-five thousand, whichever in the opinion of the Secretary is appropriate. Nothing in this subsection shall prevent any municipality, designated as a redevelopment area or eligible to be designated as a redevelopment area, from combining with any other community having mutual economic interests and transportation and marketing patterns for the purposes of such designation.

[(c) Upon the request of the Secretary, the Secretary of Labor, the Secretary of Agriculture, the Secretary of the Interior, and such other heads of agencies as may be appropriate are authorized to conduct such special studies, obtain such information,and compile and furnish to the Secretary such data as the Secretary may deem necessary or proper to enable him to make the determinations provided for in this section. The Secretary shall reimburse when appropriate, out of any funds appropriated to carry out the purposes of this Act, the foregoing officers for any expenditures incurred by them under this section.

[(d) If a State has no area designated under the preceding subsections of this section as a redevelopment area, the Secretary shall designate as a redevelopment area that area in such State which in his opinion most nearly qualifies under such preceding subsections. An area so designated shall have its eligibility terminated in accordance with the provisions of section 402 if any other area within the same State subsequently has become qualified or been designated under any other subsection of this section other than subsection (a)(6) as of the time of the annual review prescribed by section 402: *Provided*, That the Secretary shall not terminate any designation of an area in a State as a redevelopment area if to do so would result in such State having no redevelopment area.

[(e) As used in this Act, the term ''redevelopment area'' refers to any area within the United States which has been designated by the Secretary as a redevelopment area.

[ANNUAL REVIEW OF AREA ELIGIBILITY

[SEC. 402. The Secretary shall conduct an annual review of all areas designated in accordance with section 401 of this Act, and on the basis of such reviews shall terminate or modify such designation whenever such an area no longer satisfies the designation requirements of section 401, but in no event shall such designation of an area be terminated prior to the expiration of the third year after the date such area was so designated. No area previously designated shall retain its designated status unless it maintains a currently approved overall economic development program in accordance with subsection 202(b)(10). No termination of eligibility shall (1) be made without thirty days' prior notification to the area concerned, (2) affect the validity of any application filed, or contract or undertaking entered into, with respect to such area pursuant to this Act prior to such termination, (3) prevent any such area from again being designated a redevelopment area under section 401 of this Act if the Secretary determines it to be eligible under such section, or (4) be made in the case of any designated area where the Secretary determines that an improvement in the unemployment rate of a designated area is primarily the result of increased employment in occupations not likely to be permanent, The Secretary shall keep the departments and agencies of the Federal Government, and interested State or local agencies, advised at all times of any changes made hereunder with respect to the classification of any area.

[PART B—ECONOMIC DEVELOPMENT DISTRICTS

[SEC. 403. (a) In order that economic development projects of broader geographic significance may be planned and carried out, the Secretary is authorized—

[(1) to designate appropriate "economic development districts" within the United States with the concurrence of the States in which such districts will be wholly or partially located, if—

[(A) the proposed district is of sufficient size or population, and contains sufficient resources, to foster economic development on a scale involving more than a single redevelopment area;

[(B) the proposed district contains at least one redevelopment area;

[(C) the proposed district contains one or more redevelopment areas or economic development centers identified in an approved district overall economic development program as having sufficient size and potential to foster the economic growth activities necessary to alleviate the distress of the redevelopment areas within the district; and

[(D) the proposed district has a district overall economic development program which includes adequate land use and transportation planning and contains a specific program for district cooperation, self-help, and public investment and is approved by the State or States affected and by the Secretary;

[(2) to designate as "economic development centers," in accordance with such regulations as he shall prescribe, such areas as he may deem appropriate, if—

[(A) the proposed center has been identified and included in an approved district overall economic development program and recommended by the State or States affected for such special designation:

[(B) the proposed center is geographically and economically so related to the district that its economic growth may reasonably be expected to contribute significantly to the alleviation of distress in the redevelopment areas of the district; and

[(C) the proposed center does not have a population in excess of two hundred and fifty thousand according to the last preceding Federal census.

[(3) to provide financial assistance in accordance with the criteria of sections 101, 201, and 202 of this Act, except as may be herein otherwise provided, for projects in economic development centers designed under subsection (a)(2) above, if—

⟦(A) the project will further the objectives of the overall economic development program of the district in which it is to be located:

⟦(B) the project will enhance the economic growth potential of the district or result in additional long-term employment opportunities commensurate with the amount of Federal financial assistance requested; and

⟦(C) the amount of Federal financial assistance requested is reasonably related to the size, population, and economic needs of the district;

⟦(4) subject to the 20 per centum non-Federal share required for any project by subsection 101(c) of this Act, to increase the amount of grant assistance authorized by section 101 for projects within redevelopment areas (designated under section 401), by an amount not to exceed 10 per centum of the aggregate cost of any such project, in accordance with such regulations as he shall prescribe if—

⟦(A) the redevelopment area is situated within a designated economic development district and is actively participating in the economic development activities of the district; and

⟦(B) the project is consistent with an approved district overall economic development program.

⟦(b) In designating economic development districts and approving district overall economic development programs under subsection (a) of this section, the Secretary is authorized, under regulations prescribed by him—

⟦(1) to invite the several States to draw up proposed district boundaries and to identify potential economic development centers;

⟦(2) to cooperate with the several States—

⟦(A) in sponsoring and assisting district economic planning and development groups, and

⟦(B) in assisting such district groups to formulate district overall economic development programs;

⟦(3) to encourage participation by appropriate local governmental authorities in such economic development districts.

⟦(c) The Secretary shall by regulation prescribe standards for the termination or modification of economic development districts and economic development centers designated under the authority of this section.

⟦(d) As used in this Act, the term "economic development district" refers to any area within the United States composed of cooperating redevelopment areas and, where appropriate, designated economic development centers and neighboring counties or communities, which has been designated by the Secretary as an economic development district.

⟦(e) As used in this Act, the term "economic development center" refers to any area within the United States which has been identified as an economic development center in an approved district overall economic development program and which has been designated by the Secretary as eligible for financial assistance under sections 101, 201, and 202 of this Act in accordance with the provisions of this section.

⟦(f) For the purpose of this Act the term "local government" means any city, county, town, parish, village, or other general-purpose political subdivision of a State.

⟦(g) There is hereby authorized to be appropriated not to exceed $50,000,000 for the fiscal year ending June 30, 1967, and for each fiscal year thereafter through the fiscal year ending June 30, 1973, and not to exceed $45,000,000 per fiscal year for the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976, not to exceed $11,250,000 for the period beginning July 1, 1976, and ending September 30, 1976, and not to exceed $45,000,000 per fiscal year for the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, September 30, 1980, September 30, 1981, for financial assistance extended under the provisions of subsection (a)(3) and (A)(4) hereof.

⟦(h) In order to allow time for adequate and careful district planning, subsection (g) of this section shall not be effective until one year from the date of enactment.

⟦(i) Each economic development district designated by the Secretary under this section shall as soon as practicable after the date of enactment of this section or after its designation provide that a copy of the district overall economic development program be furnished to the appropriate regional commission established under title V of this Act, if any part of such proposed district is within such a region or to the Appalachian Regional Commission established under the Appalachian Regional Development Act of 1965, if any part of such proposed district is within the Appalachian region.

⟦(j) The Secretary is authorized to provide the financial assistance which is available to a redevelopment area under this Act to those parts of an economic development district which are not within a redevelopment area, when such assistance will be of a substantial direct benefit to a redevelopment area within such district. Such financial assistance shall be provided in the same manner and to the same extent as is provided in this Act for a redevelopment area, except that nothing in this subsection shall be construed to permit such parts to receive the increase in the amount of grant assistance authorized in paragraph (4) of subsection (a) of this section.

⟦PART C—INDIAN ECONOMIC DEVELOPMENT

⟦SEC. 404. In order to assure a minimum Federal commitment to alleviate economic distress of Indians, in addition to their eligibility for assistance with funds authorized under other parts of this Act, there are authorized to be appropriated not to exceed $25,000,000 per fiscal year for the fiscal years ending June 30, 1975, and June 30, 1976, not to exceed $6,250,000 for the period beginning July 1, 1976, and ending September 30, 1976, and not to exceed $25,000,000 per fiscal year for the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, September 30, 1980, September 30, 1981, for the purpose of providing assistance under this Act to Indian tribes. Such sums shall be in addition to all other funds made available to Indian tribes under this Act.

[PART D—UNEMPLOYMENT RATE DETERMINATIONS

[SEC. 405. Whenever any provision of this Act requires the Secretary of Labor, or the Secretary, to make any determination or other finding relating to the unemployment rate of any area, information regarding such unemployment rate may be furnished either by the Federal Government or by a State. Unemployment rates furnished by a State shall be accepted by the Secretary unless he determines that such rates are inaccurate. The Secretary shall provide technical assistance to State and local governments in the calculation of unemployment rates to insure their validity and standardization.

[TITLE VI—ADMINISTRATION

[SEC. 601. (a) The Secretary shall administer this Act and, with the assistance of an Assistant Secretary of Commerce, in addition to those already provided for, shall supervise and direct the Administrator created herein, and coordinate the Federal cochairmen appointed heretofore or subsequent to this Act. The Assistant Secretary created by this section shall be appointed by the President by and with the advice and consent of the Senate. Such Assistant Secretary shall perform such functions as the Secretary may prescribe. There shall be appointed by the President, by and with the advice and consent of the Senate, an Administrator for Economic Development who shall be compensated at the rate provided for level V of the Federal Executive Salary Schedule who shall perform such duties as are assigned by the Secretary.

[(b) Paragraph (12) of subsection (d) of section 303 of the Federal Executive Salary Act of 1964 is amended by striking out "(4)" and inserting in lieu thereof "(5)".

[(c) Subsection (e) of section 303 of the Federal Executive Salary Act of 1964 is amended by adding at the end thereof the following new paragraph:

["(100) Administrator for Economic Development."

[ADVISORY COMMITTEE ON REGIONAL ECONOMIC DEVELOPMENT

[SEC. 602. The Secretary shall appoint a National Public Advisory Committee on Regional Economic Development which shall consist of twenty-five members and shall be composed of representatives of labor, management, agriculture, State and local governments, and the public in general. From the members appointed to such committee the Secretary shall designate a Chairman. Such committee, or any duly established subcommittee thereof, shall from time to time make recommendations to the Secretary relative to the carrying out of his duties under this Act. Such committee shall hold not less than two meetings during each calendar year.

[CONSULTATION WITH OTHER PERSONS AND AGENCIES

[SEC. 603. (a) The Secretary is authorized from time to time to call together and confer with any persons, including representatives of labor, management, agriculture, and government, who can assist in meeting the problems of area and regional unemployment or underemployment.

⟦(b) The Secretary may make provisions for such consultation with interested departments and agencies as he may deem appropriate in the performance of the functions vested in him by this Act.

⟦ADMINISTRATION, OPERATION, AND MAINTENANCE

⟦SEC. 604. No Federal assistance shall be approved under this Act unless the Secretary is satisifed that the project for which Federal assistance is granted will be properly and efficiently administered, operated, and maintained.

⟦TITLE VII—MISCELLANEOUS

⟦POWERS OF SECRETARY

⟦SEC. 701. In performing his duties under this Act, the Secretary is authorized to—

⟦(1) adopt, alter, and use a seal, which shall be judicially noticed;

⟦(2) hold such hearings, sit and act at such times and places, and take such testimony, as he may deem advisable.

⟦(3) request directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality information, suggestions, estimates, and statistics needed to carry out the purposes of this Act; and each department, bureau, agency, board, commission, office, establishment or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics directly to the Secretary;

⟦(4) under regulations prescribed by him, assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with loans made or evidences of indebtedness purchased under this Act, and collect or compromise all obligations assigned to or held by him in connection with such loans or evidences of indebtedness until such time as such obligations may be referred to the Attorney General for suit or collection;

⟦(5) further extend the maturity of or renew any loan made or evidence of indebtedness purchased under this Act, beyond the periods stated in such loan or evidence of indebtedness or in this Act, for additional periods not to exceed ten years, if such extension or renewal will aid in the orderly liquidation of such loan or evidence of indebtedness;

⟦(6) deal with, complete, renovate, improve, modernize, insure, rent, or sell for cash or credit, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any real or personal property conveyed to, or otherwise acquired by him in connection with loans made or evidences of indebtedness purchased under this Act;

[(7) pursue to final collection, by way of compromise or other administrative action, prior to reference to the Attorney General, all claims against third parties assigned to him in connection with loans made or evidences of indebtedness purchased under this Act. This shall include authority to obtain deficiency judgments or otherwise in the case of mortgages assigned to the Secretary. Section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), shall not apply to any contract of hazard insurance or to any purchase or contract for services or supplies on account of property obtained by the Secretary as a result of loans made or evidences of indebtedness purchased under this Act if the premium therefor or the amount thereof does not exceed $1,000. The power to convey and to execute, in the name of the Secretary, deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real or personal property or any interest therein acquired by the Secretary pursuant to the provisions of this Act may be exercised by the Secretary or by any officer or agent appointed by him for that purpose without the execution of any express delegation of power or power of attorney;

[(8) acquire, in any lawful manner, any property (real, personal, or mixed, tangible or intangible), whenever deemed necessary or appropriate to the conduct of the activities authorized in sections 201, 202, 301, 403, and 503 of this Act;

[(9) in addition to any powers, functions, privileges, and immunities otherwise vested in him, take any and all actions, including the procurement of the services of attorneys by contract, determined by him to be necessary or desirable in making, purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively dealing with or realizing on loans made or evidences of indebtedness purchased under this Act;

[(10) employ experts and consultants or organizations therefor as authorized by section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a), compensate individuals so employed at rates not in excess of $100 per diem, including travel time, and allow them, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5 of such Act (5 U.S.C. 73b–2) for persons in the Government service employed intermittently, while so employed: *Provided, however,* That contracts for such employment may be renewed annually;

[(11) sue and be sued in any court of record of a State having general jurisdiction or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Secretary or his property. Nothing herein shall be construed to except the activities under this Act from the application of sections 507(b) and 2679 of title 28, United States Code, and of section 367 of the Revised Statutes (5 U.S.C. 316); and

⟦(12) establish such rules, regulations and procedures as he may deem appropriate in carrying out the provisions of this Act.

⟦PREVENTION OF UNFAIR COMPETITION

⟦SEC. 702. No financial assistance under this Act shall be extended to any project when the result would be to increase the production of goods, materials, or commodities, or the availability of services or facilities, when there is not sufficient demand for such goods, materials, commodities, services, or facilities, to employ the efficient capacity of existing competitive commercial or industrial enterprises.

⟦SAVINGS PROVISIONS

⟦SEC. 703. (a) No suit, action, or other proceedings lawfully commenced by or against the Administrator or any other officer of the Area Redevelopment Administration in his official capacity or in relation to the discharge of his official duties under the Area Redevelopment Act, shall abate by reason of the taking effect of the provisions of this Act, but the court may, on motion or supplemental petition filed at any time within twelve months after such taking effect, showing a necessity for the survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, allow the same to be maintained by or against the Secretary or the Administrator or such other officer of the Department of Commerce as may be appropriate.

⟦(b) Except as may be otherwise expressly provided in this Act, all powers and authorities conferred by this Act shall be cumulative and additional to and not in derogation of any powers and authorities otherwise existing. All rules, regulations, orders, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to applicable law, prior to the effective date of this Act, by any agency, officer, or office pertaining to any functions, powers, and duties under the Area Redevelopment Act shall continue in full force and effect after the effective date of this Act until modified or rescinded by the Secretary or such other officer of the Department of Commerce as, in accordance with applicable law, may be appropriate.

⟦TRANSFER OF FUNCTIONS, EFFECTIVE DATE, AND LIMITATIONS ON ASSISTANCE

⟦SEC. 704. (a) The functions, powers, duties, and authorities and the assets, funds, contracts, loans, liabilities, commitments, authorizations, allocations, and records which are vested in or authorized to be transferred to the Secretary of the Treasury under section 29(b) of the Area Redevelopment Act, and all functions, powers, duties, and authorities under section 29(c) of the Area Redevelopment Act are hereby vested in the Secretary.

⟦(b) The President may designate a person to act as Administrator under this Act until the office is filled as provided in this Act or until the expiration of the first period of sixty days following the effective date of this Act, which shall first occur. While so acting such person shall receive compensation at the rate provided by this Act for such office.

⟦(c) The provisions of this Act shall take effect upon enactment unless herein explicitly otherwise provided.

⟦(d) Notwithstanding any requirements of this Act relating to the eligibility of areas, projects for which applications are pending before the Area Redevelopment Administration on the effective date of this Act shall for a period of one year thereafter be eligible for consideration by the Secretary for such assistance under the provisions of this Act as he may determine to be appropriate.

⟦(e) No financial assistance authorized under this Act shall be used to finance the cost of facilities for the generation, transmission, or distribution of electrical energy, or to finance the cost of facilities for the production or transmission of gas (natural, manufactured, or mixed), except (1) for projects specifically authorized by Congress, and (2) for local projects for industrial parks and industrial or commercial areas in communities where the electrical energy or gas supply is, or is threatened to be interrupted or curtailed resulting in a loss of jobs, or where the purpose is to save jobs, or create new jobs, on condition that (A) the Secretary finds that project financing is not available from private lenders or other Federal agencies on terms which, in the opinion of the Secretary, will permit accomplishment of the project, and (B) the State or Federal regulatory body regulating such service determines that the facility to be financed will not compete with an existing public utility rendering such a service to the public at rates or charges subject to regulation by such State or Federal regulatory body, or if there is a determination of competition, the State or Federal regulatory body must make a determination that in the area to be served by the facility for which the financial assistance is to be extended there is a need for an increase in such service (taking into consideration reasonably forseeable future needs) which the existing public utility is not able to meet through its existing facilities or through an expansion which it agrees to undertake. Not more than $7,000,000 approximated to carry out titles I and II of this Act may be expended annually for such projects.

⟦SEPARABILITY

⟦SEC. 705. Notwithstanding any other evidence of the intent of Congress, it is hereby declared to be the intent of Congress that if any provision of this Act or the application thereof to any persons or circumstances shall be adjudged by any court of competent jurisdiction to be invalid such judgment shall not affect, impair, or invalidate the remainder of this Act or its application to other persons and circumstances, but shall be confined in its operation to the provision of this Act or the application thereof to the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered.

⟦APPLICATION OF ACT

⟦SEC. 706. As used in this Act, the terms "State", "States", and "United States" include the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

[ANNUAL REPORT

[SEC. 707. The Secretary shall make a comprehensive and detailed annual report to the Congress of his operations under this Act for each fiscal year beginning with the fiscal year ending June 30, 1966. Such report shall be printed and shall be transmitted to the Congress not later than April 1 of the year following the fiscal year with respect to which such report is made.

[USE OF OTHER FACILITIES

[SEC. 708. (a) The Secretary is authorized to delegate to the heads of other departments and agencies of the Federal Government any of the Secretary's functions, powers, and duties this Act as he may deem appropriate, and to authorize the redelegation of such functions, powers, and duties by the heads of such departments and agencies.

[(b) Departments and agencies of the Federal Government shall exercise their powers, duties, and functions in such manner as will assist in carrying out the objectives of this Act.

[(c) Funds authorized to be appropriated under this Act may be transferred between departments and agencies of the Government, if such funds are used for the purposes for which they are specifically authorized and appropriated.

[APPROPRIATION

[SEC. 709. There are hereby authorized to be appropriated such sums as may be necessary to carry out those provisions of the Act for which specific authority for appropriations is not otherwise provided in this Act, except that there are hereby authorized to be appropriated to carry out those provisions of the Act for which specific authority for appropriations is not otherwise provided in this Act not to exceed $25,000,000 for the fiscal year ending September 30, 1982. Appropriations authorized under this Act shall remain available until expended unless otherwise provided by appropriations Acts.

[PENALTIES

[SEC. 710. (a) Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any financial assistance under section 101, 201, or 403 or any extension thereof by renewal, deferment or action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Secretary or for the purpose of obtaining money, property, or anything of value, under this Act, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both.

[(b) Whoever, being connected in any capacity with the Secretary, in the administration of this Act (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to him or pledged or otherwise entrusted to him, or (2) with intent to defraud the Secretary or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner, makes any false entry in any book, report or statement of or to the Secretary, or without being duly authorized draws any orders of issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof, or (3) with intent to defraud participates or shares in or receives directly or indirectly any money, profit, property, or benefit through any transaction, loan, grant, commission, contract, or any other act of the Secretary, or (4) gives any unauthorized information concerning any future action of plan of the Secretary which might affect the value of securities, or having such knowledge invests or speculates, directly or indirectly, in the securities or property of any company or corporation receiving loans, grants, or other assistance from the Secretary, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both.

[EMPLOYMENT OF EXPEDITERS AND ADMINISTRATIVE EMPLOYEES

[SEC. 711. No financial assistance shall be extended by the Secretary under section 101, 201, 202, or 403 to any business enterprise unless the owners, partners, or officers of such business enterprise (1) certify to the Secretary the names of any attorneys, agents, and other persons engaged by or on behalf of such business enterprise for the purpose of expediting applications made to the Secretary for assistance of any sort, under this Act, and the fees paid or to be paid to any such person; and (2) execute an agreement binding such business enterprise, for a period of two years after such assistance is rendered by the Secretary to such business enterprise, to refrain from employing tendering any office or employment to, or retaining for professional services, any person who, on the date such assistance or any part thereof was rendered, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee, occupying a position or engaging in activities which the Secretary shall have determined involve discretion with respect to the granting of assistance under this Act.

[PREVAILING RATE OF WAGE AND FOURTH-HOUR WEEK

[SEC. 712. All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary under this Act shall be paid wages at rates not less than those prevailing on smiliar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5). The Secretary shall not extend any financial assistance under sections 101, 201, 202, 403, 903, and 1003, for such project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 FR 3176; 64 Stat. 1267; 5 U.S.C. 133z–15), and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

[RECORD OF APPLICATIONS

[SEC. 713. The Secretary shall maintain as a permanent part of the records of the Department of Commerce a list of applications approved for financial assistance under section 101, 201, 202, or 403, which shall be kept available for public inspection during the regular business hours of the Department of Commerce. The following information shall be posted in such list as soon as each application is approved: (1) the name of the applicant and, in the case of corporate applications, the names of the officers and directors thereof, (2) the amount and duration of the loan or grant for which application is made, (3) the purposes for which the proceeds of the loan or grant are to be used, and (4) a general description of the security offered in the case of a loan.

[RECORDS AND AUDIT

[SEC. 714. (a) Each recipient of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

[(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this Act.

[CONFORMING AMENDMENT

[SEC. 715. All benefits heretofore specially made available (and not subsequently revoked) under other Federal programs to persons or to public or private organizations, corporations, or entities in areas designated by the Secretry as "redevelopment areas" under section 5 of the Area Redevelopment Act, are hereby also extended, insofar as practicable, to such areas as may be designated as "redevelopment areas" or "economic development centers" under the authority of section 401 or 403 of this Act: *Provided, however,* That this section shall not be construed as limiting such administrative discretion as may have been conferred under any other law.

[SEC. 716. All financial and technical assistance authorized under this Act shall be in addition to any Federal assistance previously authorized, and no provision hereof shall be construed as authorizing or permitting any reduction or diminution in the proportional amount of Federal assistance to which any State or other entity eligible under this Act would otherwise be entitled under the provisions of any other Act.

[TITLE VIII—ECONOMIC RECOVERY FOR DISASTER AREAS

[PURPOSE OF TITLE

[SEC. 801. (a) It is the purpose of this title to provide assistance for the economic recovery, after the period of emergency aid and replacement of essential facilities and services, of any major disaster area which has suffered a dislocation of its economy of sufficient severity to require (1) assistance in planning for development to replace that lost in the major disaster; (2) continued coordination of assistance available under Federal-aid programs; and (3) continued assistance toward the restoration of the employment base.

❲(b) As used in this title, the term "major disaster" means a major disaster declared by the President in accordance with the Disaster Relief and Emergency Assistance Act.

❲DISASTER RECOVERY PLANNING

❲SEC. 802. (a)(1) In the case of any area affected by a major disaster the Governor may request the President for assistance under this title. The Governor, within thirty days after authorization of such assistance by the President, shall designate a Recovery Planning Council for such area or for each part thereof.

❲(2) Such Recovery Planning Council shall be composed of not less than five members, a majority of whom shall be local elected officials of political subdivisions within the affected areas, at least one representative of the State, and a representative of the Federal Government appointed by the President in accordance with paragraph (3) of this subsection. During the major disaster, the Federal coordinating officer shall also serve on the Recovery Planning Council.

❲(3) The Federal representative on such Recovery Planning Council may be the Chairman of the Federal Regional Council for the affected area, or a member of the Federal Regional Council designated by the Chairman of such Regional Council. The Federal representative on such Recovery Planning Council may be the Federal Cochairman of the Regional Commission established pursuant to title V of this Act, or the Appalachian Regional Development Act of 1965, or his designee, where all of the area affected by a major disaster is within the boundaries of such Commission.

❲(4) The Governor may designate an existing multijurisdictional organization as the Recovery Planning Council where such organization complies with paragraph (2) of this subsection with the addition of State and Federal representatives except that if all or part of an area affected by a major disaster is within the jurisdiction of an existing multijurisdictional organization established under title VI of this Act or title III of the Appalachian Regional Development Act of 1965, such organization, with the addition of State and Federal representatives in accordance with paragraph (2) of this subsection, shall be designated by the Governor as the Recovery Planning Council. In any case in which such title III or IV organizations is designated as the Recovery Planning Council under this paragraph, some local elected officials of political subdivisions within the affected areas must be appointed to serve on such Recovery Planning Council. Where possible, the organization designated as the Recovery Planning Council shall be or shall be subsequently designated as the appropriate agency required by section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334) and by the Intergovernmental Cooperation Act of 1968 (Public Law 90–577; 82 Stat. 1098).

❲(5) The Recovery Planning Council shall include private citizens as members to the extent feasible, and shall provide for and encourage public participation in its deliberations and decisions.

❲(b) The Recovery Planning Council (1) shall review existing plans for the affected area; and (2) may recommend to the Governor and responsible local governments such revisions as it determines necessary for the economic recovery of the area, including the development of new plans and the preparation of a recovery investment plan for the 5-year period following the declaration of the major disaster. The Recovery Planning Council shall accept as one element of the recovery investment plans determinations made under section 406(c) of the Disaster Relief and Emergency Assistance Act.

⟦(c)(1) A recovery investment plan prepared by a Recovery Planning Council may recommend the revision, deletion, reprogramming, or additional approval of Federal-aid projects and programs within the area—

⟦(A) for which application has been made but approval not yet granted;

⟦(B) for which funds have been obligated or approval granted but construction not yet begun;

⟦(C) for which funds have been or are scheduled to be apportioned within the five years after the declaration of the disaster;

⟦(D) which may otherwise be available to the area under any State schedule or revised State schedule of priorities; or

⟦(E) which may reasonably be anticipated as becoming available under existing programs.

⟦(2) Upon the recommendation of the Recovery Planning Council and the request for the Governor, any funds for projects or programs identified pursuant to paragraph (1) of this subsection may, to any extent consistent with appropriation Acts, be placed in reserve by the responsible Federal agency for use in accordance with such recommendations. Upon the request of the Governor and with the concurrence of affected local governments, such funds may be transferred to the Recovery Planning Council to be expended in the implementation of the recovery investment plan, except that no such transfer may be made unless such expenditure is for a project or program for which such funds originally were made available by an appropriation Act.

⟦PUBLIC WORKS AND DEVELOPMENT FACILITIES GRANTS AND LOANS

⟦SEC. 803. (a) The President is authorized to provide funds to any Recovery Planning Council for the implementation of a recovery investment plan by public bodies. Such funds may be used—

⟦(1) to make loans for the acquisition or development of land and improvements for public works, public service, or development facility usage, including the acquisition or development of parks or open spaces, and the acquisition, construction, rehabilitation, alteration, expansion, or improvement of such facilities, including related machinery and equipment, and

⟦(2) to make supplementary grants to increase the Federal share for projects for which funds are reserved pursuant to subsection (c)(2) of section 802 of this Act, or other Federal-aid projects in the affected area.

⟦(b) Grants and loans under this section may be made to any State, local government, or private or public nonprofit organization representing any area or part thereof affected by a major disaster.

⟦(c) No supplementary grant shall increase the Federal share of the cost of any project to greater than 90 per centum, except in the case of a grant for the benefit of Indians or Alaska Natives, or in the case of any State or local government which the President determines has exhausted its effective taxing and borrowing capacity.

⟦(d) Loans under this section shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum per annum.

⟦(e) Financial assistance under this title shall not be extended to assist establishments relocating from one area to another or to assist subcontractors whose purpose is to divest, or whose economic success is dependent upon divesting, other contractors or subcontractors of contracts therefore customarily performed by them. Such limitations shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the Secretary of Commerce finds that the establishment of such branch, affiliate, or subsidiary will not result in an increase in unemployment of the area of original location or in any other area where such entity conducts business operations, unless the Secretary has reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

⟦LOAN GUARANTEES

⟦SEC. 804. The President is authorized to provide funds to Recovery Planning Councils to guarantee loans made to private borrowers by private lending institutions (1) to aid in financing any project within any area affected by a major disaster for the purchase or development of land and facilities (including machinery and equipment) for industrial or commercial usage including the construction of new buildings, and rehabilitation of abandoned or unoccupied buildings, and the alteration, conversion or enlargement of existing buildIngs; and (2) for working capital in connection with projects in areas assisted under paragraph (1), upon application of such institution and upon such terms and conditions as the President may prescribe. No such gurantee shall at any time exceed 90 per centum of the amount of the outstanding unpaid balance of such loan.

⟦TECHNICAL ASSISTANCE

⟦SEC. 805. (a) In carrying out the purposes of this title the President is authorized to provide technical assistance which would be useful in facilitating economic recovery in areas affected by major disasters. Such assistance shall include project planning and feasibility studies, management and operational assistance, and studies evaluating the needs of, and developing potentialities for, economic recovery of such areas. Such assistance may be provided by the President directly, through the payment of funds authorized for this title to other departments or agencies of the Federal Government, through the employment of private individuals, partnerships, firms, corporations or suitable institutions, under contracts entered into for such purposes, or through grants-in-aid to appropriate public or private non-profit State, area, district, or local organization.

[(b) The President is authorized to make grants to defray not to exceed 75 per centum of the administrative expenses of Recovery Planning Councils designated pursuant to section 802 of this Act. In determining the amount of the non-Federal share of such costs or expenses, the President shall give due consideration to all contributions both in cash and in kind, fairly evaluated including but not limited to space, equipment, and services. Where practicable, grants-in-aid authorized under this subsection shall be used in conjunction with other available planning grants, to assure adequate and effective planning and economical use of funds.

[TITLE IX—SPECIAL ECONOMIC DEVELOPMENT AND ADJUSTMENT ASSISTANCE

[PURPOSE

[SEC. 901. It is the purpose of this title to provide special economic development and adjustment assistance programs to help State and local areas meet special needs arising from actual or threatened severe unemployment arising from economic dislocation, including unemployment arising from actions of the Federal Government and from compliance with environmental requirements which remove economic activities from a locality, and economic adjustment problems resulting from severe changes in economic conditions (including long-term economic deterioration), and to encourage cooperative intergovernmental action to prevent or solve economic adjustment problems. Nothing in this title is intended to replace the efforts of the economic adjustment program of the Department of Defense.

[DEFINITION

[SEC. 902. As used in this title, the term "eligible recipient" means a redevelopment area or economic development district established under title IV of this Act, an Indian tribe, a State, a city or other political subdivision of a State, or consortium of such political subdivisions.

[GRANTS BY SECRETARY

[SEC. 903. (a)(1) The Secretary is authorized to make grants directly to any eligible recipient in an area (A) which the Secretary has determined has experienced, or may reasonably be foreseen to be about to experience, a special need to meet an expected rise in unemployment, or other economic adjustment problems (including those caused by any action or decision of the Federal Government), or (B) which the Secretary determines has demonstrated long-term economic deterioration, to carry out or develop a plan which meets the requirements of subsection (b) of this section and which is approved by the Secretary, to use such grants for any of the following: public facilities, public services, business development, planning, unemployment compensation (in accordance with subsection (d) of this section), rent supplements, mortgage payment assistance, research, technical assistance, training, relocation of individuals and businesses, and other assistance which demonstrably furthers the economic adjustment objectives of this title.

⟦(2)(A) Such grants may be used in direct expenditures by the eligible recipient or through redistribution by it to public and private entities in grants, loans, loan guarantees, payments to reduce interest on loan guarantees, or other appropriate assistance, but no grant shall be made by an eligible recipient to a private profit-making entity.

⟦(B) Grants for unemployment compensation shall be made to the State. Grants for any other purpose shall be made to any appropriate eligible recipient capable of carrying out such purpose.

⟦(b) No plan shall be approved by the Secretary under this section unless such plan shall—

⟦(1) identify each economic development and adjustment need of the area for which assistance is sought under this title;

⟦(2) describe each activity planned to meet each such need;

⟦(3) explain the details of the method of carrying out each such planned activity;

⟦(4) contain assurances satisfactory to the Secretary that the proceeds from the repayment of loans made by the eligible recipient with funds granted under this title will be used for economic adjustment; and

⟦(5) be in such form and contain such additional information as the Secretary shall prescribe.

⟦(c) The Secretary to the extent practicable shall coordinate his activities in requiring plans and making grants and loans under this title with regional commissions, States, economic development districts and other appropriate planning and development organizations.

⟦(d) In each case in which the Secretary determines a need for assistance under subsection (a) of this section due to an increase in unemployment and makes a grant under this section, the Secretary may transfer funds available for such grant to the Secretary of Labor and the Secretary of Labor is authorized to provide to any individual unemployed as a result of the dislocation for which such grant is made, such assistance as he deems appropriate while the individual is unemployed. Such assistance as the Secretary of labor may provide shall be available to an individual not otherwise disqualified under State law for unemployment compensaton benefits, as long as the individual's unemployment caused by the dislocation continues or until the individual is reemployed in a suitable position, but no longer than one year after the unemployment commences. Such assistance for a week of employment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the dislocation occurred, and the amount of assistance under this subsection shall be reduced by any amount of unemployment compensation or of private income protection insurance compensation available to such individual for such week of employment. The Secretary of Labor is directed to provide such assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.

⟦REPORTS AND EVALUATION

⟦SEC. 904. (a) Each eligible recipient which receives assistance under this title shall annually during the period such assistance continues make a full and complete report to the Secretary, in such manner as the Secretary shall prescribe, and such report shall contain an evaluation of the effectiveness of the economic assistance provided under this title in meeting the need it was designed to alleviate and the purposes of this title.

⟦(b) The Secretary shall include in the annual report pursuant to section 707 of this Act a consolidated report with his recommendations, if any, on the assistance authorized under this title, in a form which he deems appropriate.

⟦AUTHORIZATION OF APPROPRIATIONS

⟦SEC. 905. There is authorized to be appropriated to carry out this title not to exceed $75,000,000 for the fiscal year ending June 30, 1975, and $100,000,000 for the fiscal year ending June 30, 1976, not to exceed $25,000,000 for the transition quarter ending September 30, 1976, and not to exceed $100,000,000 per fiscal year for the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, September 30, 1980, and September 30, 1981, and not to exceed $33,000,000 for the fiscal year ending September 30, 1982.

⟦TITLE X—JOB OPPORTUNITIES PROGRAM

⟦STATEMENT OF PURPOSE

⟦SEC. 1001. It is the purpose of this title to provide emergency financial assistance to stimulate, maintain or expand job creating activities in areas, both urban and rural, which are suffering from unusually high levels of unemployment.

⟦DEFINITIONS

⟦SEC. 1002. For the purpose of this title the term "eligible area" means any area, which the Secretary of Labor designates as an area which has a rate of unemployment equal to or in excess of 7 per centum for the most recent calendar quarter or any area designated pursuant to section 204(c) of the Comprehensive Employment and Training Act of 1973 which has unemployment equal to or in excess of 7 per centum with special consideration given to areas with unemployment rates above the national average.

⟦PROGRAM AUTHORIZED

⟦SEC. 1003. (a) To carry out the purposes of this title, the Secretary of Commerce, in accordance with the provisions of this title, is authorized from funds appropriated and made available under section 1007 of this title to provide financial assistance to programs and projects identified through the review process described in section 1004 to expand or accelerate the job creating impact of such programs or projects for unemployed persons in eligible areas. Programs and projects for which funds are made available under this title shall not be approved until the officials of the appropriate units of general government in the affected areas have an adequate opportunity to comment on the specific proposal.

[(b) Whenever funds are made available by the Secretary of Commerce under this title for any program or project, the head of the department, agency, or instrumentality of the Federal Government administering the law authorizing such assistance shall, except as otherwise provided in this subsection, administer the law authorizing such assistance in accordance with all applicable provisions of that law, except provisions relating to—

[(1) requiring allocation of funds among the States,

[(2) limits upon the total amount of such grants for any period, and

[(3) the Federal contribution to any State or local government, whenever the President or head of such department, agency, or instrumentality of the Federal Government determines that any non-Federal contribution cannot reasonably be obtained by the State or local government concerned.

[(c) Where necessary to effectively carry out the purposes of this title, the Secretary of Commerce is authorized to assist eligible areas in making applications for grants under this title.

[(d) Notwithstanding any other provisions of this title, funds allocated by the Secretary of Commerce shall be available only for a program or project which the Secretary indentifies and selects pursuant to this subsection, and which can be initiated or implemented promptly and substantially completed within twelve months after allocation is made. In identifying and selecting programs and projects pursuant to this subsection, the Secretary shall (1) give priority to programs and projects which are most effective in creating and maintaining productive employment, including permanent and skilled employment measured as the amount of such direct and indirect employment generated or supported by the additional expenditures of Federal funds under this title, and (2) consider the appropriations of the proposed activity to the number and needs of unemployed persons in the eligible area.

[(e)(1) The Secretary, if the national unemployment rate is equal to or exceeds 7 per centum for the most recent calendar quarter, shall expedite and give priority to grant applications submitted for such areas having unemployment in excess of the national average rate of unemployment for the most recent calendar quarter. Seventy per centum of the funds appropriated pursuant to this title shall be available only for grants in areas as defined in the first sentence of this subsection.

[(2) Not more than 15 per centum of all amounts appropriated to carry out this title shall be available under this title for projects or programs within any one State, except that in the case of Guam, Virgin Islands, and American Samoa, not less than one-half of 1 per centum in the aggregate shall be available for such projects or programs.

[PROGRAM REVIEW

[SEC. 1004. (a) Within forty-five days after any funds are appropriated to the Secretary to carry out the purposes of this title, after the date of enactment of the Public Works and Economic Development Act Amendments of 1976, each department, agency, or instrumentality of the Federal Government, each regional commission established by section 101 of the Appalachian Regional Development Act of 1965 or pursuant to section 502 of this Act, shall (1) complete a review of its budget, plans, and programs and including State, substate, and local development plans filed with such department, agency or commission; (2) evaluate the job creation effectiveness of programs and projects for which funds are proposed to be obligated in the calendar year and additional programs and projects (including new or revised programs and projects submitted under subsection (b) for which funds could be obligated in such year with Federal financial assistance under this title; and (3) submit to the Secretary of Commerce recommendations for programs and projects which have the greatest potential to stimulate the creation of jobs for unemployed persons in eligible areas. Within forty-five days of the receipt of such recommendations the Secretary of Commerce shall review such recommendations, and after consultation with such department, agency, instrumentality, regional commission, State, or local government make allocations of funds in accordance with section 1003(d) of this title.

⟦(b) States and political subdivisions in any eligible area may, pursuant to subsection (a), submit to the appropriate department, agency, or instrumentality of the Federal Government (or regional commission) program and project applications for Federal financial assistance provided under this title.

⟦(c) The Secretary, in reviewing programs and projects recommended for any eligible area shall give priority to programs and projects originally sponsored by States and political subdivisions, including, but not limited to, new or revised programs and projects submitted in accordance with this section.

⟦RULES AND REGULATIONS

⟦SEC. 1005. The Secretary of Commerce shall prescribe such rules, regulations, and procedures to carry out the provisions of this title as will assure that adequate consideration is given to the relative needs of applicants for assistance in rural eligible areas and the relative needs of applicants for assistance in urban eligible areas and to any equitable distribution of funds authorized under this title between rural and urban eligible applicants unless this would require project grants to be made in areas which do not meet the criteria of this title.

⟦AUTHORIZATION OF APPROPRIATIONS

⟦SEC. 1006. (a) There are hereby authorized to be appropriated to carry out the provisions of this title $81,250,000 for each calendar quarter of a fiscal year during which the national average unemployment is equal to or exceeds 7 per centum on the average. No further appropriations of funds is authorized under this section if a determination is made that the national average rate of unemployment has receded below an average of 7 per centum for the most recent calendar quarter as determined by the Secretary of Labor.

⟦(b) Funds authorized by subsecton (a) are available for grants by the Secretary when the national average unemployment is equal to or in excess of an average of 7 per centum for the most recent calendar quarter. If the national average unemployment rate recedes below an average of 7 per centum for the most recent calendar quarter, the authority of the Secretary to make grants or obligate funds under this title is terminated. Grants may not be made until the national average unemployment has equalled or exceeded an average of 7 per centum for the most recent calendar quarter.

⟦(c) Funds authorized to carry out this title shall be in addition to, and not in lieu of, any amounts authorized by other provisions of law.

⟦TERMINATION DATE

⟦SEC. 1007. Notwithstanding any other provision of this title, no further obligations of funds appropriated under this title shall be made by the Secretary of Commerce after September 30, 1981.

⟦CONSTRUCTION COSTS

⟦SEC. 1008. No program or project originally approved for funds under an existing program shall be determined to be ineligible for Federal financial assistance under this title solely because of increased construction costs.⟧

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY ACT

*   *   *   *   *   *   *

ESTABLISHMENT, FUNCTIONS, AND ACTIVITIES

SEC. 2. (a) There is established within the Department of Commerce a science, engineering, technology, and measurement laboratory to be known as the National Institute of Standards and Technology (hereafter in this Act referred to as the "Institute").

(b) The Secretary of Commerce (hereafter in this Act referred to as the "Secretary") acting through the Director of the Institute (hereafter in this Act referred to as the "Director") and, if appropriate, through other officials, is authorized to take all actions necessary and appropriate to accomplish the purposes of this Act, including the following functions of the Institute—

⟦(1) to assist industry in the development of technology and procedures needed to improve quality, to modernize manufacturing processes, to ensure product reliability, manufacturability, functionality, and cost-effectiveness, and to facilitate the more rapid commercialization, especially by small- and medium-sized companies throughout the United States, of products based on new scientific discoveries in fields such as automation, electronics, advanced materials, biotechnology, and optical technologies;⟧

⟦(2)⟧ *(1)* to develop, maintain, and retain custody of the national standards of measurement, and provide the means and methods for making measurements consistent with those standards, including comparing standards used in scientific investigations, engineering, manufacturing, commerce, industry, and educational institutions with the standards adopted or recognized by the Federal Government;

⟦(3)⟧ *(2)* to enter into contracts, including cooperative research and development arrangements, in furtherance of the purposes of this Act;

⟦(4)⟧ *(3)* to provide United States industry, Government, and educational institutions with a national clearinghouse of current information, techniques, and advice for the achievement of higher quality and productivity based on current domestic and international scientific and technical development;

⟦(5)⟧ *(4)* to assist industry in the development of measurements, measurement methods, and basic measurement technology;

⟦(6)⟧ *(5)* to determine, compile, evaluate, and disseminate physical constants and the properties and performance of conventional and advanced materials when they are important to science, engineering, manufacturing, education, commerce, and industry and are not available with sufficient accuracy elsewhere;

⟦(7)⟧ *(6)* to develop a fundamental basis and methods for testing materials, mechanisms, structures, equipment, and systems, including those used by the Federal Government;

⟦(8)⟧ *(7)* to assure the compatibility of United States national measurement standards with those of other nations;

⟦(9)⟧ *(8)* to cooperate with other departments and agencies of the Federal Government, with industry, with State and local governments, with the governments of other nations and international organizations, and with private organizations in establishing standard practices, codes, specifications, and voluntary consensus standards;

⟦(10)⟧ *(9)* to advise government and industry on scientific and technical problems; and

⟦(11)⟧ *(10)* to invent, develop, and (when appropriate) promote transfer to the private sector of measurement devices to serve special national needs.

* * * * * * *

(d) In carrying out the extramural funding programs of the Institute⟦, including the programs established under sections 25, 26, and 28 of this Act⟧, the Secretary may retain reasonable amounts of any funds appropriated pursuant to authorizations for these programs in order to pay for the Institute's management of these programs.

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VISITING COMMITTEE ON ⟦ADVANCED⟧ *STANDARDS AND* TECHNOLOGY

SEC. 10. (a) There is established within the Institute a Visiting Committee on ⟦Advanced⟧ *Standards and* Technology (hereafter in this Act referred to as the "Committee"). The Committee shall consist of nine members appointed by the Director, at least five of whom shall be from United States industry. The Director shall appoint as original members of the Committee any final members of the National Bureau of Standards Visiting Committee who wish to serve in such capacity. In addition to any powers and functions otherwise granted to it by this Act, the Committee shall review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress.

* * * * * * *

⟦STUDIES BY THE NATIONAL RESEARCH COUNCIL

⟦SEC. 24. The Director may periodically contract with the National Research Council for advice and studies to assist the Institute to serve United States industry and science. The subjects of such advice and studies may include—

⟦(1) the competitive position of the United States in key areas of manufacturing and emerging technologies and research activities which would enhance that competitiveness;

⟦(2) potential activities of the Institute, in cooperation with industry and the States, to assist in the transfer and dissemination of new technologies for manufacturing and quality assurance; and

⟦(3) identification and assessment of likely barriers to widespread use of advanced manufacturing technology by the United States workforce, including training and other initiatives which could lead to a higher percentage of manufacturing jobs of United States companies being located within the borders of our country.

⟦REGIONAL CENTERS FOR THE TRANSFER OF MANUFACTURING TECHNOLOGY

⟦SEC. 25. (a) The Secretary, through the Director and, if appropriate, through other officials, shall provide assistance for the creation and support of Regional Centers for the Transfer of Manufacturing Technology (hereafter in this Act referred to as the "Centers"). Such centers shall be affiliated with any United States-based nonprofit institution or organization, or group thereof, that applies for and is awarded financial assistance under this section in accordance with the description published by the Secretary in the Federal Register under subsection (c)(2). Individual awards shall be decided on the basis of merit review. The objective of the Centers is to enhance productivity and technological performance in United States manufacturing through—

⟦(1) the transfer of manufacturing technology and techniques developed at the Institute to Centers and, through them, to manufacturing companies throughout the United States;

⟦(2) the participation of individuals from industry, universities, State governments, other Federal agencies, and, when appropriate, the Institute in cooperative technology transfer activities;

⟦(3) efforts to make new manufacturing technology and processes usable by United States-based small- and medium-sized companies;

⟦(4) the active dissemination of scientific, engineering, technical, and management information about manufacturing to industrial firms, including small- and medium-sized manufacturing companies; and

⟦(5) the utilization, when appropriate, of the expertise and capability that exists in Federal laboratories other than the Institute.

⟦(b) The activities of the Centers shall include—

⟦(1) the establishment of automated manufacturing systems and other advanced production technologies, based on research by the Institute, for the purpose of demonstrations and technology transfer;

⟦(2) the active transfer and dissemination of research findings and Center expertise to a wide range of companies and enterprises, particularly small- and medium-sized manufacturers; and

⟦(3) loans, on a selective, short-term basis, of items of advanced manufacturing equipment to small manufacturing firms with less than 100 employees.

⟦(c)(1) The Secretary may provide financial support to any Center created under subsection (a) for a period not to exceed six years. The Secretary may not provide to a Center more than 50 percent of the capital and annual operating and maintenance funds required to create and maintain such Center.

⟦(2) The Secretary shall publish in the Federal Register, within 90 days after the date of the enactment of this section, a draft description of a program for establishing Centers, including—

⟦(A) a description of the program;

⟦(B) procedures to be followed by applicants;

⟦(C) criteria for determining qualified applicants;

⟦(D) criteria, including those listed under paragraph (4), for choosing recipients of financial assistance under this section from among the qualified applicants; and

⟦(E) maximum support levels expected to be available to Centers under the program in the fourth through sixth years of assistance under this section.

The Secretary shall publish a final description under this paragraph after the expiration of a 30-day comment period.

⟦(3) Any nonprofit institution, or group thereof, or consortia of nonprofit institutions, including entities existing on the date of the enactment of this section, may submit to the Secretary an application for financial support under this subsection, in accordance with the procedures established by the Secretary and published in the Federal Register under paragraph (2). In order to receive assistance under this section, an applicant shall provide adequate assurances that it will contribute 50 percent or more of the proposed Center's capital and annual operating and maintenance costs for the first three years and an increasing share for each of the last three years. Each applicant shall also submit a proposal for the allocation of the legal rights associated with any invention which may result from the proposed Center's activities.

⟦(4) The Secretary shall subject each such application to merit review. In making a decision whether to approve such application and provide financial support under this subsection, the Secretary shall consider at a minimum (A) the merits of the application, particularly those portions of the application regarding technology transfer, training and education, and adaptation of manufacturing technologies to the needs of particular industrial sectors, (B) the quality of service to be provided, (C) geographical diversity and extent of service area, and (D) the percentage of funding and amount of in-kind commitment from other sources.

[(5) Each Center which receives financial assistance under this section shall be evaluated during its third year of operation by an evaluation panel appointed by the Secretary. Each such evaluation panel shall be composed of private experts, none of whom shall be connected with the involved Center, and Federal officials. An official of the Institute shall chair the panel. Each evaluation panel shall measure the involved Center's performance against the objectives specified in this section. The Secretary shall not provide funding for the fourth through the sixth years of such Center's operation unless the evaluation is positive. If the evaluation is positive, the Secretary may provide continued funding through the sixth year at declining levels, which are designed to ensure that the Center no longer needs financial support from the Institute by the seventh year. In no event shall funding for a Center be provided by the Department of Commerce after the sixth year of the operation of a Center.

[(6) The provisions of chapter 18 of title 35, United States Code, shall (to the extent not inconsistent with this section) apply to the promotion of technology from research by Centers under this section except for contracts for such specific technology extension or transfer services as may be specified by statute or by the Director.

[(d) In addition to such sums as may be authorized and appropriated to the Secretary and Director to operate the Centers program, the Secretary and Director also may accept funds from other Federal departments and agencies for the purpose of providing Federal funds to support Centers. Any Center which is supported with funds which originally came from other Federal departments and agencies shall be selected and operated according to the provisions of this section.

[ASSISTANCE TO STATE TECHNOLOGY PROGRAMS

[SEC. 26. (a) In addition to the Centers program created under section 25, the Secretary, through the Director and, if appropriate, through other officials, shall provide technical assistance to State technology programs throughout the United States, in order to help those programs help businesses, particularly small- and medium-sized businesses, to enhance their competitiveness through the application of science and technology.

[(b) Such assistance from the Institute to State technology programs shall include, but not be limited to—

[(1) technical information and advice from Institute personnel;

[(2) workshops and seminars for State officials interested in transferring Federal technology to businesses; and

[(3) entering into cooperative agreements when authorized to do so under this or any other Act.]

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⟦ADVANCED TECHNOLOGY PROGRAM

⟦SEC. 28. (a) There is established in the Institute an Advanced Technology Program (hereafter in this Act referred to as the ''Program'') for the purpose of assisting United States businesses in creating and applying the generic technology and research results necessary to—

⟦(1) commercialize significant new scientific discoveries and technologies rapidly; and

⟦(2) refine manufacturing technologies.

The Secretary, acting through the Director, shall assure that the Program focuses on improving the competitive position of the United States and its businesses, gives preference to discoveries and to technologies that have great economic potential, and avoids providing undue advantage to specific companies. In operating the Program, the Secretary and Director shall, as appropriate, be guided by the findings and recommendations of the Biennial National Critical Technology Reports prepared pursuant to section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683).

⟦(b) Under the Program established in subsection (a), and consistent with the mission and policies of the Institute, the Secretary, acting through the Director, and subject to subsections (c) and (d), may—

⟦(1) aid industry-led United States joint research and development ventures (hereafter in this section referred to as ''joint ventures'') (which may also include universities and independent research organizations), including those involving collaborative technology demonstration projects which develop and test prototype equipment and processes, through—

⟦(A) provision of organizational and technical advice; and

⟦(B) participation in such joint ventures by means of grants, cooperative agreements, or contracts, if the Secretary, acting through the Director, determines participation to be appropriate, which may include (i) partial start-up funding, (ii) provision of a minority share of the cost of such joint ventures for up to 5 years, and (iii) making available equipment, facilities, and personnel,

provided that emphasis is placed on areas where the Institute has scientific or technological expertise, on solving generic problems of specific industries, and on making those industries more competitive in world markets;

⟦(2) provide grants to and enter into contracts and cooperative agreements with United States businesses (especially small businesses), provided that emphasis is placed on applying the Institute's research, research techniques, and expertise to those organizations' research programs;

⟦(3) involve the Federal laboratories in the Program, where appropriate, using among other authorities the cooperative research and development agreements provided for under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980; and

⟦(4) carry out, in a manner consistent with the provisions of this section, such other cooperative research activities with joint ventures as may be authorized by law or assigned to the Program by the Secretary.

⟦(c) The Secretary, acting through the Director, is authorized to take all actions necessary and appropriate to establish and operate the Program, including—

⟦(1) publishing in the Federal Register draft criteria and, no later than six months after the date of the enactment of this section, following a public comment period, final criteria, for the selection of recipients of assistance under subsection (b) (1) and (2);

⟦(2) monitoring how technologies developed in its research program are used, and reporting annually to the Congress on the extent of any overseas transfer of these technologies;

⟦(3) establishing procedures regarding financial reporting and auditing to ensure that contracts and awards are used for the purposes specified in this section, are in accordance with sound accounting practices, and are not funding existing or planned research programs that would be conducted in the same time period in the absence of financial assistance under the Program;

⟦(4) assuring that the advice of the Committee established under section 10 is considered routinely in carrying out the responsibilities of the Institute; and

⟦(5) providing for appropriate dissemination of Program research results.

⟦(d) When entering into contracts or making awards under subsection (b), the following shall apply:

⟦(1) No contract or award may be made until the research project in question has been subject to a merit review, and has, in the opinion of the reviewers appointed by the Director and the Secretary, acting through the Director, been shown to have scientific and technical merit.

⟦(2) In the case of joint ventures, the Program shall not make an award unless the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.

⟦(3) No Federal contract or cooperative agreement under subsection (b)(2) shall exceed $2,000,000 over 3 years, or be for more than 3 years unless a full and complete explanation of such proposed award, including reasons for exceeding these limits, is submitted in writing by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives. The proposed contract or cooperative agreement may be executed only after 30 calendar days on which both Houses of Congress are in session have elapsed since such submission. Federal funds made available under subsection (b)(2) shall be used only for direct costs and not for indirect costs, profits, or management fees of the contractor.

⟦(4) In determining whether to make an award to a particular joint venture, the Program shall consider whether the members of the joint venture have made provisions for the appropriate participation of small United States businesses in such joint venture.

[(5) Section 552 of title 5, United States Code, shall not apply to the following information obtained by the Federal Government on a confidential basis in connection with the activities of any business or any joint venture receiving funding under the Program—

[(A) information on the business operation of any member of the business or joint venture; and

[(B) trade secrets possessed by any business or any member of the joint venture.

[(6) Intellectual property owned and developed by any business or joint venture receiving funding or by any member of such a joint venture may not be disclosed by any officer or employee of the Federal Government except in accordance with a written agreement between the owner or developer and the Program.

[(7) If a business or joint venture fails before the completion of the period for which a contract or award has been made, after all allowable costs have been paid and appropriate audits conducted, the unspent balance of the Federal funds shall be returned by the recipient to the Program.

[(8) Upon dissolution of any joint venture or at the time otherwise agreed upon, the Federal Government shall be entitled to a share of the residual assets of the joint venture proportional to the Federal share of the costs of the joint venture as determined by independent audit.

[(9) A company shall be eligible to receive financial assistance under this section only if—

[(A) the Secretary finds that the company's participation in the Program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided under this section to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and

[(B) either—

[(i) the company is a United States-owned company; or

[(ii) the Secretary finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under this Act; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

⟦(10) Grants, contracts, and cooperative assignments under this section shall be designed to support projects which are high risk and which have the potential for eventual substantial widespread commercial application. In order to receive a grant, contract, or cooperative agreement under this section, a research and development entity shall demonstrate to the Secretary the requisite ability in research and technology development and management in the project area in which the grant, contract, or cooperative agreement is being sought.

⟦(11)(A) Title to any intellectual property arising from assistance provided under this section shall vest in a company or companies incorporated in the United States. The United States may reserve a nonexclusive, nontransferable, irrevocable paid-up license, to have practiced for or on behalf of the United States, in connection with any such intellectual property, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a company incorporated in the United States, until the expiration of the first patent obtained in connection with such intellectual property.

⟦(B) For purposes of this paragraph, the term "intellectual property" means an invention patentable under title 35, United States Code, or any patent on such an invention.

⟦(C) Nothing in this paragraph shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.

⟦(e) The Secretary may, within 30 days after notice to Congress, suspend a company or joint venture from continued assistance under this section if the Secretary determines that the company, the country of incorporation of the company or a parent company, or the joint venture has failed to satisfy any of the criteria set forth in subsection (d)(9), and that it is in the national interest of the United States to do so.

⟦(f) When reviewing private sector requests for awards under the Program, and when monitoring the progress of assisted research projects, the Secretary and the Director shall, as appropriate, coordinate with the Secretary of Defense and other senior Federal officials to ensure cooperation and coordination in Federal technology programs and to avoid unnecessary duplication of effort. The Secretary and the Director are authorized to work with the Director of the Office of Science and Technology Policy, the Secretary of Defense, and other appropriate Federal officials to form interagency working groups or special project offices to coordinate Federal technology activities.

⟦(g) In order to analyze the need for the value of joint ventures and other research projects in specific technical fields, to evaluate any proposal made by a joint venture or company requesting the Secretary's assistance, or to monitor the progress of any joint venture or any company research project which receives Federal funds under the Program, the Secretary, the Under Secretary of Commerce for Technology, and the Director may, notwithstanding any other provision of law, meet with such industry sources as they consider useful and appropriate.

⟦(h) Up to 10 percent of the funds appropriated for carrying out this section may be used for standards development and technical activities by the Institute in support of the purposes of this section.

⟦(i) In addition to such sums as may be authorized and appropriated to the Secretary and Director to operate the Program, the Secretary and Director also may accept funds from other Federal departments and agencies for the purpose of providing Federal funds to support awards under the Program. Any Program award which is supported with funds which originally came from other Federal departments and agencies shall be selected and carried out according to the provisions of this section.

⟦(j) As used in this section—

⟦(1) the term ''joint venture'' means any group of activities, including attempting to make, making, or performing a contract, by two or more persons for the purpose of—

⟦(A) theoretical analysis, experimentation, or systematic study of phenomena or observable facts;

⟦(B) the development or testing of basic engineering techniques;

⟦(C) the extension of investigative finding or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes;

⟦(D) the collection, exchange, and analysis of research information;

⟦(E) the production of any product, process, or service; or

⟦(F) any combination of the purposes specified in subparagraphs (A), (B), (C), (D), and (E),

and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture; and

⟦(2) the term ''United States-owned company'' means a company that has majority ownership or control by individuals who are citizens of the United States.⟧

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STEVENSON–WYDLER TECHNOLOGY INNOVATION ACT OF 1980

* * * * * * *

SEC. 3. PURPOSE.

It is the purpose of this Act to improve the economic, environmental, and social well-being of the United States by—

(1) establishing organizations in the executive branch to study and stimulate technology;

⟦(2) promoting technology development through the establishment of cooperative research centers;⟧

⟦(3)⟧ *(2)* stimulating improved utilization of federally funded technology developments, including inventions, software, and training technologies, by State and local governments and the private sector;

⟦(4)⟧ *(3)* providing encouragement for the development of technology through the recognition of individuals and companies which have made outstanding contributions in technology; and

⟦(5)⟧ *(4)* encouraging the exchange of scientific and technical personnel among academia, industry, and Federal laboratories.

SEC. 4. DEFINITIONS.

As used in this Act, unless the context otherwise requires, the term—

⟦(1) "Office" means the Office of Technology Policy established under section 5 of this Act.⟧

⟦(2)⟧ *(1)* "Secretary" means the Secretary of Commerce.

⟦(3)⟧ *(2)* "Under Secretary" means the Under Secretary of Commerce for Technology appointed under section 5(b)(1).

⟦(4) "Centers" means Cooperative Research Centers established under section 6 or section 8 of this Act.⟧

⟦(5)⟧ *(3)* "Nonprofit institution" means an organization owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

⟦(6)⟧ *(4)* "Federal laboratory" means any laboratory, any federally funded research and development center, or any center established under section 6 or section 8 of this Act that is owned, leased, or otherwise used by a Federal agency and funded by the Federal Government, whether operated by the Government or by a contractor.

⟦(7)⟧ *(5)* "Supporting agency" means either the Department of Commerce or the National Science Foundation, as appropriate.

⟦(8)⟧ *(6)* "Federal agency" means any executive agency as defined in section 105 of title 5, United States Code, and the military departments as defined in section 102 of such title, as well as any agency of the legislative branch of the Federal Government.

⟦(9)⟧ *(7)* "Invention" means any invention or discovery which is or may be patentable or otherwise protected under title 35, United States Code, or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

⟦(10)⟧ *(8)* "Made" when used in conjunction with any invention means the conception or first actual reduction to practice of such invention.

⟦(11)⟧ *(9)* "Small business firm" means a small business concern as defined in section 2 of Public Law 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

⟦(12)⟧ *(10)* "Training technology" means computer software and related materials which are developed by a Federal agency to train employees of such agency, including but not limited to software for computer-based instructional systems and for interactive video disc systems.

⟦(13) "Clearinghouse" means the Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation established by section 6.⟧

⟦SEC. 5. COMMERCE AND TECHNOLOGICAL INNOVATION.

⟦(a) ESTABLISHMENT.—There is established in the Department of Commerce a Technology Administration, which shall operate in accordance with the provisions, findings, and purposes of this Act. The Technology Administration shall include—

⟦(1) the National Institute of Standards and Technology;

⟦(2) the National Technical Information Service; and

⟦(3) a policy analysis office, which shall be known as the Office of Technology Policy.

⟦(b) UNDER SECRETARY AND ASSISTANT SECRETARY.—The President shall appoint, by and with the advice and consent of the Senate, to the extent provided for in appropriations Acts—

⟦(1) an Under Secretary of Commerce for Technology, who shall be compensated at the rate provided for level III of the Executive Schedule in section 5314 of title 5, United States Code; and

⟦(2) an Assistant Secretary of Commerce for Technology Policy, who shall serve as policy analyst for the Under Secretary.

⟦(c) DUTIES.—The Secretary, through the Under Secretary, as appropriate, shall—

⟦(1) manage the Technology Administration and supervise its agencies, programs, and activities;

⟦(2) conduct technology policy analyses to improve United States industrial productivity, technology, and innovation, and cooperate with United States industry in the improvement of its productivity, technology, and ability to compete successfully in world markets;

⟦(3) carry out any functions formerly assigned to the Office of Productivity, Technology, and Innovation;

⟦(4) assist in the implementation of the Metric Conversion Act of 1975;

⟦(5) determine the relationships of technological developments and international technology transfers to the output, employment, productivity, and world trade performance of United States and foreign industrial sectors;

⟦(6) determine the influence of economic, labor and other conditions, industrial structure and management, and government policies on technological developments is particular industrial sectors worldwide;

⟦(7) identify technological needs, problems, and opportunities within and across industrial sectors that, if addressed, could make a significant contribution to the economy of the United States;

⟦(8) assess whether the capital, technical and other resources being allocated to domestic industrial sectors which are likely to generate new technologies are adequate to meet private and social demands for goods and services and to promote productivity and economic growth;

⟦(9) propose and support studies and policy experiments, in cooperation with other Federal agencies, to determine the effectiveness of measures with the potential of advancing United States technological innovation;

⟦(10) provide that cooperative efforts to stimulate industrial innovation be undertaken between the Secretary and other officials in the Department of Commerce responsible for such areas as trade and economic assistance;

⟦(11) encourage and assist the creation of centers and other joint initiatives by State of local governments, regional organizations, private businesses, institutions of higher education, nonprofit organizations, or Federal laboratories to encourage technology transfer, to stimulate innovation, and to promote an appropriate climate for investment in technology-related industries;

⟦(12) propose and encourage cooperative research involving appropriate Federal entities, State or local governments, regional organizations, colleges or universities, nonprofit organizations, or private industry to promote the common use of resources, to improve training programs and curricula, to stimulate interest in high technology careers, and to encourage the effective dissemination of technology skills within the winder community;

⟦(13) serve as a focal point for discussions among United States companies on topics of interest to industry and labor, including discussions regarding manufacturing and discussions regarding emerging technologies;

⟦(14) consider government measures with the potential of advancing United States technological innovation and exploiting innovations of foreign origin; and

⟦(15) publish the results of studies and policy experiments.

⟦(d) JAPANESE TECHNICAL LITERATURE.—(1) In addition to the duties specified in subsection (c), the Secretary and the Under Secretary shall establish, and through the National Technical Information Service and with the cooperation of such other offices within the Department of Commerce as the Secretary considers appropriate, maintain a program (including an office in Japan) which shall, on a continuing basis—

⟦(A) monitor Japanese technical activities and developments;

⟦(B) consult with businesses, professional societies, and libraries in the United States regarding their needs for information on Japanese developments in technology and engineering;

⟦(C) acquire and translate selected Japanese technical reports and documents that may be of value to agencies and departments of the Federal Government, and to businesses and researchers in the United States; and

⟦(D) coordinate with other agencies and departments of the Federal Government to identify significant gaps and avoid duplication in efforts by the Federal Government to acquire, translate, index, and disseminate Japanese technical information.

Activities undertaken pursuant to subparagraph (C) of this paragraph shall only be performed on a cost-reimbursable basis. Translations referred to in such subparagraph shall be performed only to the extent that they are not otherwise available from sources within the private sector in the United States.

⟦(2) Beginning in 1986, the Secretary shall prepare annual reports regarding important Japanese scientific discoveries and technical innovations in such areas as computers, semiconductors, biotechnology, and robotics and manufacturing. In preparing such reports, the Secretary shall consult with professional societies and businesses in the United States. The Secretary may, to the extent provided in advance by appropriation Acts, contract with private organizations to acquire and translate Japanese scientific and technical information relevant to the preparation of such reports.

⟦(3) The Secretary also shall encourage professional societies and private businesses in the United States to increase their efforts to acquire, screen, translate, and disseminate Japanese technical literature.

⟦(4) In addition, the Secretary shall compile, publish, and disseminate an annual directory which lists—

⟦(A) all programs and services in the United States that collect, abstract, translate, and distribute Japanese scientific and technical information; and

⟦(B) all translations of Japanese technical documents performed by agencies and departments of the Federal Government in the preceding 12 months that are available to the public.

⟦(5) The Secretary shall transmit to the Congress, within 1 year after the date of enactment of the Japanese Technical Literature Act of 1986, a report on the activities of the Federal Government to collect, abstract, translate, and distribute declassified Japanese scientific and technical information.

⟦(e) REPORT.—The Secretary shall prepare and submit to the President and Congress, within 3 years after the date of enactment of this Act, a report on the progress, findings, and conclusions of activities conducted pursuant to sections 5, 6, 8, 11, 12, and 13 of this Act (as then in effect) and recommendations for possible modifications thereof.

⟦SEC. 6. CLEARINGHOUSE FOR STATE AND LOCAL INITIATIVES ON PRODUCTIVITY, TECHNOLOGY, AND INNOVATION.

⟦(a) ESTABLISHMENT.—There is established within the Office of Productivity, Technology, and Innovation a Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation. The Clearinghouse shall serve as a central repository of information on initiatives by State and local governments to enhance the competitiveness of American business through the stimulation of productivity, technology, and innovation and Federal efforts to assist State and local governments to enhance competitiveness.

⟦(b) RESPONSIBILITIES.—The Clearinghouse may—

⟦(1) establish relationships with State and local governments, and regional and multistate organizations of such governments, which carry out such initiatives;

⟦(2) collect information on the nature, extent, and effects of such initiatives, particularly information useful to the Congress, Federal agencies, State and local governments, regional and multistate organizations of such governments, businesses, and the public throughout the United States;

⟦(3) disseminate information collected under paragraph (2) through reports, directories, handbooks, conferences, and seminars;

⟦(4) provide technical assistance and advice to such governments with respect to such initiatives, including assistance in determining sources of assistance from Federal agencies which may be available to support such initiatives;

⟦(5) study ways in which Federal agencies, including Federal laboratories, are able to use their existing policies and programs to assist State and local governments, and regional and multistate organizations of such governments, to enhance the competitiveness of American business;

⟦(6) make periodic recommendations to the Secretary, and to other Federal agencies upon their request, concerning modifications in Federal policies and programs which would improve Federal assistance to State and local technology and business assistance programs;

⟦(7) develop methodologies to evaluate State and local programs, and, when requested, advise State and local governments, and regional and multistate organizations of such governments, as to which programs are most effective in enhancing the competitiveness of American business through the stimulation of productivity, technology, and innovation; and

⟦(8) make use of, and disseminate, the nationwide study of State industrial extension programs conducted by the Secretary.

⟦(c) CONTRACTS.—In carrying out subsection (b), the Secretary may enter into contracts for the purpose of collecting information on the nature, extent, and effects of initiatives.

⟦(d) TRIENNIAL REPORT.—The Secretary shall prepare and transmit to the Congress once each 3 years a report on initiatives by State and local governments to enhance the competitiveness of American businesses through the stimulation of productivity, technology, and innovation. The report shall include recommendations to the President, the Congress, and to Federal agencies on the appropriate Federal role in stimulating State and local efforts in this area. The first of these reports shall be transmitted to the Congress before January 1, 1989.

⟦SEC. 7. COOPERATIVE RESEARCH CENTERS.

⟦(a) ESTABLISHMENT.—The Secretary shall provide assistance for the establishment of Cooperative Research Centers. Such Centers shall be affiliated with any university, or other nonprofit institution, or group thereof, that applies for and is awarded a grant or enters into a cooperative agreement under this section. The objective of the Centers is to enhance technological innovation through—

⟦(1) the participation of individuals from industry and universities in cooperative technological innovation activities;

⟦(2) the development of the generic research base, important for technological advance and innovative activity, in which individual firms have little incentive to invest, but which may have significant economic or strategic importance, such as manufacturing technology;

⟦(3) the education and training of individuals in the technological innovation process;

⟦(4) the improvement of mechanisms for the dissemination of scientific, engineering, and technical information among universities and industry;

⟦(5) the utilization of the capability and expertise, where appropriate, that exists in Federal laboratories; and

⟦(6) the development of continuing financial support from other mission agencies, from State and local government, and from industry and universities through, among other means, fees, licenses, and royalties.

⟦(b) ACTIVITIES.—The activities of the Centers shall include, but need not be limited to—

⟦(1) research supportive of technological and industrial innovation including cooperative industry-university research;

⟦(2) assistance to individuals and small business in the generation, evaluation and development of technological ideas supportive of industrial innovation and new business ventures;

⟦(3) technical assistance and advisory services to industry, particularly small businesses; and

⟦(4) curriculum development, training, and instruction in invention, entrepreneurship, and industrial innovation.

Each Center need not undertake all of the activities under this subsection.

⟦(c) REQUIREMENTS.—Prior to establishing a Center, the Secretary shall find that—

⟦(1) consideration has been given to the potential contribution of the activities proposed under the Center to productivity, employment, and economic competitiveness of the United States;

⟦(2) a high likelihood exists of continuing participation, advice, financial support, and other contributions from the private sector;

⟦(3) the host university or other nonprofit institution has a plan for the management and evaluation of the activities proposed within the particular Center, including:

⟦(A) the agreement between the parties as to the allocation of patent rights on a nonexclusive, partially exclusive, or exclusive license basis to and inventions conceived or made under the auspices of the Center; and

⟦(B) the consideration of means to place the Center, to the maximum extent feasible, on a self-sustaining basis;

⟦(4) suitable consideration has been given to the university's or other nonprofit institution's capabilities and geographical location; and

⟦(5) consideration has been given to any effects upon completion of the activities proposed under the Center.

⟦(d) PLANNING GRANTS.—The Secretary is authorized to make available nonrenewable planning grants to universities or nonprofit institutions for the purpose of developing a plan required under subsection (c)(3).

⟦(e) RESEARCH AND DEVELOPMENT UTILIZATION.—In the promotion of technology from research and development efforts by

Centers under this section, chapter 18 of title 35, United States Code, shall apply to the extent not inconsistent with this section.

[SEC. 8. GRANTS AND COOPERATIVE AGREEMENTS.

[(a) IN GENERAL.—The Secretary may make grants and enter into cooperative agreements according to the provisions of this section in order to assist any activity consistent with this Act, including activities performed by individuals. The total amount of any such grant or cooperative agreement may not exceed 75 percent of the total cost of the program.

[(b) ELIGIBILITY AND PROCEDURE.—Any person or institution may apply to the Secretary for a grant or cooperative agreement available under this section. Application shall be made in such form and manner, and with such content and other submissions, as the Assistant Secretary shall prescribe. The Secretary shall act upon each such application within 90 days after the date on which all required information is received.

[(c) TERMS AND CONDITIONS.—

[(1) Any grant made, or cooperative agreement entered into, under this section shall be subject to the limitations and provisions set forth in paragraph (2) of this subsection, and to such other terms, conditions, and requirements as the Secretary deems necessary or appropriate.

[(2) Any person who receives or utilizes any proceeds of any grant made or cooperative agreement entered into under this section shall keep such records as the Secretary shall by regulation prescribe as being necessary and appropriate to facilitate effective audit and evaluation, including records which fully disclose the amount and disposition by such recipient of such proceeds, the total cost of the program or project in connection with which such proceeds were used, and the amount, if any, of such costs which was provided through other sources.

[SEC. 9. NATIONAL SCIENCE FOUNDATION COOPERATIVE RESEARCH CENTERS.

[(a) ESTABLISHMENT AND PROVISIONS.—The National Science Foundation shall provide assistance for the establishment of Cooperative Research Centers. Such Centers shall be affiliated with a university or other nonprofit institution, or a group thereof. The objective of the Centers is to enhance technological innovation as provided in section 6(a) through the conduct of activities as provided in section 6(b).

[(b) PLANNING GRANTS.—The National Science Foundation is authorized to make available nonrenewable planning grants to universities or nonprofit institutions for the purpose of developing the plan as described under section 6(c)(3).

[(c) TERMS AND CONDITIONS.—Grants, contracts, and cooperative agreements entered into by the National Science Foundation in execution of the powers and duties of the National Science Foundation under this Act shall be governed by the National Science Foundation Act of 1950 and other pertinent Acts.

[SEC. 10. ADMINISTRATIVE ARRANGEMENTS.

[(a) COORDINATION.—The Secretary and the National Science Foundation shall, on a continuing basis, obtain the advice and cooperation of departments and agencies whose missions contribute to or are affected by the programs established under this Act, including the development of an agenda for research and policy experimentation. These departments and agencies shall include but not be limited to the Departments of Defense, Energy, Education, Health and Human Services, Housing and Urban Development and Space Administration, Small Business Administration, Council of Economic Advisers, Council on Environmental Quality, and Office of Science and Technology Policy.

⟦(b) COOPERATION.—It is the sense of the Congress that departments and agencies, including the Federal laboratories, whose missions are affected by, or could contribute to, the programs established under this Act, should, within the limits of budgetary authorizations and appropriations, support or participate in activities or projects authorized by this Act.

⟦(c) ADMINISTRATIVE AUTHORIZATION.—

⟦(1) Departments and agencies described in subsection (b) are authorized to participate in, contribute to, and serve as resources for the Centers and for any other activities authorized under this Act.

⟦(2) The Secretary and the National Science Foundation are authorized to receive moneys and to receive other forms of assistance from other departments or agencies to support activities of the Centers and any other activities authorized under this Act.

⟦(d) COOPERATIVE EFFORTS.—The Secretary and the National Science Foundation shall, on a continuing basis, provide each other the opportunity to comment on any proposed program of activity under section 7, 9, 11, 15, 17, or 20 of this Act before funds are committed to such program in order to mount complementary efforts and avoid duplication.⟧

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SEC. 11. UTILIZATION OF FEDERAL TECHNOLOGY.

(a) * * *

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(c) FUNCTIONS OF RESEARCH AND TECHNOLOGY APPLICATIONS OFFICE.—It shall be the function of each Office of Research and Technology Applications—

(1) * * *

* * * * * * *

(3) to cooperate with and assist the National Technical Information Service⟦, the Federal Laboratory Consortium for Technology Transfer,⟧ and other organizations which link the research and development resources of that laboratory and the Federal Government as a whole to potential users in State and local government and private industry;

* * * * * * *

(d) DISSEMINATION OF TECHNICAL INFORMATION.—The National Technical Information Service shall—

(1) * * *

(2) utilize the expertise and services of the National Science Foundation ⟦and the Federal Laboratory Consortium for Tech-

nology Transfer]; particularly in dealing with State and local governments;

(3) receive requests for technical assistance from State and local governments, respond to such requests with published information available to the Service[, and refer such requests to the Federal Laboratory Consortium for Technology Transfer to the extent that such requests require a response involving more than the published information available to the Service];

* * * * * * *

[(e) ESTABLISHMENT OF FEDERAL LABORATORY CONSORTIUM FOR TECHNOLOGY TRANSFER.—(1) There is hereby established the Federal Laboratory Consortium for Technology Transfer (hereinafter referred to as the "Consortium") which, in cooperation with Federal Laboratories and the private sector, shall—

[(A) develop and (with the consent of the Federal laboratory concerned) administer techniques, training courses, and materials concerning technology transfer to increase the awareness of Federal laboratory employees regarding the commercial potential of laboratory technology and innovations;

[(B) furnish advice and assistance requested by Federal agencies and laboratories for use in their technology transfer programs (including the planning of seminars for small business and other industry);

[(C) provide a clearinghouse for requests, received at the laboratory level, for technical assistance from States and units of local governments, businesses, industrial development organizations, not-for-profit organizations including universities, Federal agencies and laboratories, and other persons, and—

[(i) to the extent that such requests can be responded to with published information available to the National Technical Information Service, refer such requests to that Service, and

[(ii) otherwise refer these requests to the appropriate Federal laboratories and agencies;

[(D) facilitate communication and coordination between Offices of Research and Technology Applications of Federal laboratories;

[(E) utilize (with the consent of the agency involved) the expertise and services of the National Science Foundation, the Department of Commerce, the National Aeronautics and Space Administration, and other Federal agencies, as necessary;

[(F) with the consent of any Federal laboratory, facilitate the use by such laboratory of appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems;

[(G) with the consent of any Federal laboratory, assist such laboratory to establish programs using technical volunteers to provide technical assistance to communities related to such laboratory;

[(H) facilitate communication and cooperation between Offices of Research and Technology Applications of Federal laboratories and regional, State, and local technology transfer organizations;

⟦(I) when requested, assist colleges or universities, businesses, nonprofit organizations, State or local governments, or regional organizations to establish programs to stimulate research and to encourage technology transfer in such areas as technology program development, curriculum design, long-term research planning, personnel needs projections, and productivity assessments; and

⟦(J) seek advice in each Federal laboratory consortium region from representatives of State and local governments, large and small business, universities, and other appropriate persons on the effectiveness of the program (and any such advice shall be provided at no expense to the Government).

⟦(2) The membership of the Consortium shall consist of the Federal laboratories described in clause (1) of subsection (b) and such other laboratories as may choose to join the Consortium. The representatives to the Consortium shall include a senior staff member of each Federal laboratory which is a member of the Consortium and a senior representative appointed from each Federal agency with one or more member laboratories.

⟦(3) The representatives to the Consortium shall elect a Chairman of the Consortium.

⟦(4) The Director of the National Institute of Standards and Technology shall provide the Consortium, on a reimbursable basis, with administrative services, such as office space, personnel, and support services of the Institute, as requested by the Consortium and approved by such Director.

⟦(5) Each Federal laboratory or agency shall transfer technology directly to users or representatives of users, and shall not transfer technology directly to the Consortium. Each Federal laboratory shall conduct and transfer technology only in accordance with the practices and policies of the Federal agency which owns, leases, or otherwise uses such Federal laboratory.

⟦(6) Not later than one year after the date of the enactment of this subsection, and every year thereafter, the Chairman of the Consortium shall submit a report to the President, to the appropriate authorization and appropriation committees of both Houses of the Congress, and to each agency with respect to which a transfer of funding is made (for the fiscal year or years involved) under paragraph (7), concerning the activities of the Consortium and the expenditures made by it under this subsection during the year for which the report is made. Such report shall include an annual independent audit of the financial statements of the Consortium, conducted in accordance with generally accepted accounting principles.

⟦(7)(A) Subject to subparagraph (B), an amount equal to 0.008 percent of the budget of each Federal agency from any Federal source, including related overhead, that is to be utilized by or on behalf of the laboratories of such agency for a fiscal year referred to in subparagraph (B)(ii) shall be transferred by such agency to the National Institute of Standards at the beginning of the fiscal year involved. Amounts so transferred shall be provided by the Institute to the Consortium for the purpose of carrying out activities of the Consortium under this subsection.

⟦(B) A transfer shall be made by any Federal agency under subparagraph (A), for any fiscal year, only if—

⟦(i) the amount so transferred by that agency (as determined under such subparagraph) would exceed $10,000; and

⟦(ii) such transfer is made with respect to the fiscal year 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, or 1996.

⟦(C) The heads of Federal agencies and their designees, and the directors of Federal laboratories, may provide such additional support for operations of the Consortium as they deem appropriate.⟧

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⟦SEC. 17. MALCOLM BALDRIGE NATIONAL QUALITY AWARD.

⟦(a) ESTABLISHMENT.—There is hereby established the Malcolm Baldrige National Quality Award, which shall be evidenced by a medal bearing the inscriptions "Malcolm Baldrige National Quality Award" and "The Quest for Excellence". The medal shall be of such design and materials and bear such additional inscriptions as the Secretary may prescribe.

⟦(b) MAKING AND PRESENTATION OF AWARD.—(1) The President (on the basis of recommendations received from the Secretary), or the Secretary, shall periodically make the award to companies and other organizations which in the judgment of the President or the Secretary have substantially benefited the economic or social well-being of the United States through improvements in the quality of their goods or services resulting from the effective practice of quality management, and which as a consequence are deserving of special recognition.

⟦(2) The presentation of the award shall be made by the President or the Secretary with such ceremonies as the President or the Secretary may deem proper.

⟦(3) An organization to which an award is made under this section, and which agrees to help other American organizations improve their quality management, may publicize its receipt of such award and use the award in its advertising, but it shall be ineligible to receive another such award in the same category for a period of 5 years.

⟦(c) CATEGORIES IN WHICH AWARD MAY BE GIVEN.—(1) Subject to paragraph (2), separate awards shall be made to qualifying organizations in each of the following categories—

⟦(A) Small businesses.

⟦(B) Companies or their subsidiaries.

⟦(C) Companies which primarily provide services.

⟦(2) The Secretary may at any time expand, subdivide, or otherwise modify the list of categories within which awards may be made as initially in effect under paragraph (1), and may establish separate awards for other organizations including units of government, upon a determination that the objectives of this section would be better served thereby; except that any such expansion, subdivision, modification, or establishment shall not be effective unless and until the Secretary has submitted a detailed description thereof to the Congress and a period of 30 days has elapsed since that submission.

⟦(3) Not more than two awards may be made within any subcategory in any year (and no award shall be made within any category or subcategory if there are no qualifying enterprises in that category or subcategory).

❲(d) CRITERIA FOR QUALIFICATION.—(1) An organization may qualify for an award under this section only if it—

❲(A) applies to the Director of the National Institute of Standards and Technology in writing, for the award,

❲(B) permits a rigorous evaluation of the way in which its business and other operations have contributed to improvements in the quality of goods and services, and

❲(C) meets such requirements and specifications as the Secretary, after receiving recommendations from the Board of Overseers established under paragraph (2)(B) and the Director of the National Institute of Standards and Technology, determines to be appropriate to achieve the objectives of this section.

In applying the provisions of subparagraph (C) with respect to any organization, the Director of the National Institute of Standards and Technology shall rely upon an intensive evaluation by a competent board of examiners which shall review the evidence submitted by the organization and, through a site visit, verify the accuracy of the quality improvements claimed. The examination should encompass all aspects of the organization's current practice of quality management, as well as the organization's provision for quality management in its future goals. The award shall be given only to organizations which have made outstanding improvements in the quality of their goods or services (or both) and which demonstrate effective quality management through the training and involvement of all levels of personnel in quality improvement.

❲(2)(A) The Director of the National Institute of Standards and Technology shall, under appropriate contractual arrangements, carry out the Director's responsibilities under subparagraphs (A) and (B) of paragraph (1) through one or more broad-based nonprofit entities which are leaders in the field of quality management and which have a history of service to society.

❲(B) The Secretary shall appoint a board of overseers for the award, consisting of at least five persons selected for their preeminence in the field of quality management. This board shall meet annually to review the work of the contractor or contractors and make such suggestions for the improvement of the award process as they deem necessary. The board shall report the results of the award activities to the Director of the National Institute of Standards and Technology each year, along with its recommendations for improvement of the process.

❲(e) INFORMATION AND TECHNOLOGY TRANSFER PROGRAM.—The Director of the National Institute of Standards and Technology shall ensure that all program participants receive the complete results of their audits as well as detailed explanations of all suggestions for improvements. The Director shall also provide information about the awards and the successful quality improvement strategies and programs of the award-winning participants to all participants and other appropriate groups.

❲(f) FUNDING.—The Secretary is authorized to seek and accept gifts from public and private sources to carry out the program under this section. If additional sums are needed to cover the full cost of the program, the Secretary shall impose fees upon the organizations applying for the award in amounts sufficient to provide such additional sums. The Director is authorized to use appropriated funds to carry out responsibilities under this Act.

⟦(g) REPORT.—The Secretary shall prepare and submit to the President and the Congress, within 3 years after the date of the enactment of this section, a report on the progress, findings, and conclusions of activities conducted pursuant to this section along with recommendations for possible modifications thereof.⟧

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COAST AND GEODETIC SURVEY COMMISSIONED OFFICERS' ACT OF 1948

⟦AN ACT⟧ To provide for the distribution, promotion, separation, and retirement of commissioned officers of the Coast and Geodetic Survey, and for other purposes

⟦*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

⟦SHORT TITLE

⟦SECTION 1. That this Act may be cited as the "Coast and Geodetic Survey Commissioned Officers' Act of 1948".

⟦AUTHORIZED NUMBERS IN GRADES

⟦SEC. 2. (a) Of the total authorized number of commissioned officer on the active list of the Coast and Geodetic Survey, there are authorized numbers in permanent grade, in relative rank with officers of the Navy, in the proportion of eight in the grade of captain, to fourteen in the grade of commander, to nineteen in the grade of lieutenant commander, to twenty-three in the grade of lieutenant, to eighteen in the grade of lieutenant (junior grade), to eighteen in the grade of ensign.

⟦(b) Whenever a final fraction occurs in computing the authorized number of officers in any grade, the nearest whole number shall be taken, and if such fraction be one-half the next higher whole number shall be taken: *Provided*, That the total number of officers as authorized by law shall not be increased as the result of the computations prescribed herein, and if necessary the number of officers in the lowest grade shall be reduced accordingly.

⟦(c) No officer shall be reduced in grade or pay or separated from the active list as the result of any computations made to determine the authorized number of officers in the various grades.

⟦(d) Nothing in this section shall be construed as requiring the filling of any vacancy or as prohibiting additional numbers in any grade to compensate for vacancies existing in higher grades.

⟦(e) The total number of officers on active duty as authorized by law may be temporarily exceeded provided that the average number on active duty for the fiscal year shall not exceed the authorized number.

⟦PROMOTION AND SEPARATION OF OFFICERS

⟦SEC. 3. Promotion to fill vacancies in all permanent grades about that of lieutenant (junior grade) shall be made by selection from the next lower respective grades upon recommendation of the personnel board hereinafter provided for.

⟦SEC. 4. Irrespective of any vacancies, each officer in the permanent grade of lieutenant (junior grade) and lieutenant shall be considered by the personnel board for promotion to the grade of lieutenant and lieutenant commander in sufficient time so that, if found fully qualified, such officer may be promoted to and appointed in such grade upon completion of seven and fourteen years of service, respectively. All promotions under this section shall be made on the date on which the required service is completed, and the authorized number of officers in the grade of lieutenant and lieutenant commander shall be temporarily increased, if necessary, to authorize such appointments: *Provided,* That an officer found not fully qualified in accordance with this section may be promoted on such later date on which he may be found fully qualified.

⟦SEC. 5. Irrespective of any vacancies, any officer in the permanent grade of lieutenant commander who has completed twenty-one years of service and any officer in the permanent grade of commander who has completed thirty years of service may be considered by the personnel board at any time for promotion to the grade of commander and captain, respectively. If selected, he may be promoted at any time and the authorized number of officers in the grade of commander and captain shall be temporarily increased, if necessary, to authorize such appointments.

⟦SEC. 6. (a) Officers in the permanent grade of ensign shall be promoted to and appointed in the grade of lieutenant (junior grade) on completion of three years of service, and the authorized number of officers in the grade of lieutenant (junior grade) shall from time to time be temporarily increased as necessary to authorize such appointments.

⟦(b) Ensigns who are found not fully qualified at any time shall have their commissions revoked and be separated from the commissioned service.

⟦SEC. 7. Each officer shall be assumed to have, for promotion purposes, at least the same length of service as any officer below him on the lineal list, except that an officer who has lost numbers shall be assumed to have for promotion purposes no greater service than the officer next above him in his new position on the lineal list.

⟦SEC. 8. (a) As recommended by the personnel board—

⟦(1) an officer in the permanent grade of captain or commander may be transferred to the retired list; and

⟦(2) an officer in the permanent grade of lieutenant commander, lieutenant, or lieutenant (junior grade) who is not qualified for retirement may be separated from the service.

⟦(b) In any fiscal year, the total number of officers selected for retirement or separation under subsection (a) plus the number of officers retired for age may not exceed the whole number nearest four percent of the total number of officers authorized to be on the active list, except as otherwise provided by law.

⟦(c) Any retirement of separation under subsection (a) shall take effect on the first day of the sixth month beginning after the date on which the Secretary of Commerce approves the retirement or separation, except that if the officer concerned requests earlier retirement or separation, the date shall be as determined by the Secretary.

⟦SEC. 9. (a) An officer who is separated under section 8 and who has completed more than three years of continuous active service immediately before that separation is entitled to separation pay computed under subsection (b) unless the Secretary of Commerce determines that the conditions under which the officer is separated do not warrant payment of that pay.

⟦(b)(1) In the case of an officer who has completed five or more years of continuous active service immediately before that separation, the amount of separation pay which may be paid to the officer under this section is 10 percent of the product of (A) the years of active service creditable to the officer, and (B) twelve times the monthly basic pay to which the officer was entitled at the time of separation, or $30,000, whichever is less.

⟦(2) In the case of an officer who has completed three but fewer than five years of continuous active service immediately before that separation, the amount of separation pay which may be paid to the officer under this section is one-half of the amount computed under paragraph (1), but in no event more than $15,000.

⟦(c) In determining an officer's years of active service for the purpose of computing separation pay under this section, each full month of service that is in addition to the number of full years of service creditable to the officer is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

⟦(d)(1) A period for which an officer has previously received separation pay, severance pay, or readjustment pay under any other provision of law based on service is a uniformed service may not be included in determining the years of creditable service that may be counted in computing the separation pay of the officer under this section.

⟦(2) The total amount that an officer may receive in separation pay under this section and separation pay, severance pay, and readjustment pay under any other provision of law based on service in a uniformed service may not exceed $30,000.

⟦(e)(1) An officer who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in a uniformed service and who later qualifies for retired pay under this Act shall have deducted from each payment of retired pay so much of that pay as is based on the service for which the officer received that separation pay, severance pay, or readjustment pay until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay received.

⟦(2) An officer who has received separation pay under this section may not be deprived, by reason of receipt of that pay, of any disability compensation to which the officer is entitled under the laws administered by the Department of Veterans Affairs, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay received. Notwithstanding the preceding sentence, no deduction may be made from disability compensation for the amount of separation pay received because of an earlier discharge, separation, or release from a period of active duty if the disability which is the basis for that disability compensation was incurred or aggraved during a later period of active duty.

[SEC. 10. (a) Appointments in and promotions to all permanent grades shall be made by the President, by and with the advice and consent of the Senate.

[(b) In time of emergency declared by the President or by the Congress, and in time of war, the President is authorized, in his discretion, to suspend the operation of all or any part or parts of the several provisions of law pertaining to promotion.

[SEC. 11. Nothing in this Act shall be construed to modify the provisions of existing law relating to examination of officers for promotion, and no officer shall be promoted until he shall have passed the prescribed examinations.

[SEC. 12. (a) Temporary appointment in the grade of ensign may be made by the President alone, provided such temporary appointment will be terminated at the close of the next regular session of the Congress unless confirmed by the Senate.

[(b) Officers in the permanent grade of ensign may be temporarily promoted to an appointed in the grade of lieutenant junior grade by the President alone whenever vacancies exist in higher grades.

[(c) When determined by the Secretary of Commerce to be in the best interest of the service, officers in any permanent grade may be temporarily promoted one grade by the President alone. Any such temporary promotion terminates upon the transfer of the officer to a new assignment.

[SEC. 13. (a) When any commissioned officer serving in a rank below that of rear admiral has attained the age of sixty years, he shall be placed on the retired list: *Provided*, That this subsection shall not become effective until a date six months subsequent to the enactment of this Act, and until such effective date the retirement age for officers serving in a rank below that of rear admiral shall be sixty-two years.

[(b) When any officer serving in a rank above that of captain has attained the age of sixty-two years, he shall be placed on the retired list: *Provided*, That the President may, in his discretion, defer placing any such officer on the retired list for the length of time he deems advisable but not later than the date upon which such officer attains the age of sixty-four years.

[SEC. 14. When any commissioned officer has completed twenty years of service, he may at any time thereafter, upon his own application, in the discretion of the President, be placed on the retired list.

* * * * * * *

[SEC. 16. (a) Each commissioned officer on the retired list who first became a member of a uniformed service (as defined in section 101 of title 10, United States Code) before September 8, 1980, shall receive retired pay at the rate determined by multiplying—

[(1) the retired pay base determined under section 1406(g) of title 10, United States Code; by

⟦(2) 2½ percent of the number of years of service that may be credited to the officer under section 1405 of such title as if the officer's service were service as a member of the Armed Forces.

The retired pay so computed may not exceed 75 percent of the retired pay base.

⟦(b) Each commissioned officer on the retired list who first became a member of a uniformed service (as defined in section 101 of title 10, United States Code) on or after September 8, 1980, shall receive retired pay at the rate determined by multiplying—

⟦(1) the retired pay base determined under section 1407 of title 10, United States Code; by

⟦(2) the retired pay multiplier determined under section 1409 of such title for the number of years of service that may be credited to the officer under section 1405 of such title as if the officer's service were service as a member of the Armed Forces.

⟦(c)(1) In computing the number of years of service of an officer for the purposes of subsection (a)—

⟦(A) each full month of service that is in addition to the number of full years of service creditable to the officer shall be credited as 1/12 of a year; and

⟦(B) any remaining fractional part of a month shall be disregarded.

⟦(2) Retired pay computed under this section, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

⟦SEC. 17. (a) Each commissioned officer heretofore or hereafter retired pursuant to any provision of law shall be placed on the retired list with the highest rank, permanent or temporary, held by him while on active duty, if his performance of duty, in the case of temporary rank, has been satisfactory as determined by the Secretary of the department or departments under whose jurisdiction the officer served, and shall receive retired pay based on such higher rank: *Provided*, That for the purposes of this section the words "temporary rank" shall mean temporary rank held prior to June 30, 1946.

⟦(b) Officers on the retired list returned to an inactive status with higher rank pursuant to subsection (a) of this section shall receive retired pay based on such higher rank.

⟦SEC. 18. Nothing in this Act shall prevent any officer from being placed on the retired list with the highest rank and with the highest retired pay to which he might be entitled under other provision of law.

⟦PERSONNEL BOARD

⟦SEC. 19. At least once a year and at such other times as may be necessary, the Secretary of Commerce shall appoint a personnel board consisting of not less than five officers not below the permanent rank of commander on the active list, to recommend such changes in the lineal list as the board may determine and to make selections and recommendations for the promotion, separation, and retirement of officers as herein prescribed: *Provided*, That in case any recommendation by the board is not acceptable to the Secretary of Commerce or to the President, the board shall make such further recommendations as shall be acceptable.

* * * * * * *

⟦AMENDMENTS TO AND REPEAL OF APPOINTMENT, PROMOTION, AND RETIREMENT LAWS

⟦SEC. 21. (a) Section 5 of the Act of February 16, 1929 (45 Stat. 1186), as amended by the Act of March 18, 1936 (ch. 147, 49 Stat. 1164), is hereby further amended by deleting the word "not" in the third line.

⟦(b) Section 8 of the Act of January 19, 1942 (59 Stat. 8), is hereby amended by deleting the word "not" in the fourth line, by changing the period at the end of the section to a colon, and by adding the words "*Provided further,* That any officer, upon expiration of his appointment as Director or Assistant Director, shall, unless reappointed, revert to the grade and number that he would have occupied had he not served as Director or Assistant Director. Such officer shall be an extra number in his grade and the authorized number of ensigns shall be decreased accordingly."

⟦SEC. 22. (a) Sections, 1, 2 (except the second proviso of section 2 (b), 3, 4, 5, and 6 of the Act of January 19, 1942 (59 Stat. 8), are hereby repealed.

⟦(b) The word "physical" in the first line of section 7 of the said Act of January 19, 1942, is hereby amended to read "physical".

⟦SEC. 23. (a) Original appointments may be made in grades up to and including lieutenant after passage of a mental and physical examination given in accordance with regulations prescribed by the Secretary of Commerce: *Provided,* That the President, under such regulations as he may prescribe, may revoke the commission of any officer appointed under this section during his first three years of service if he is found not qualified for the service.

⟦(b) Any person appointed under authority of this section shall be placed on the lineal list of active duty officers in a position commensurate with his age, education, and experience in accordance with regulations prescribed by the Secretary of Commerce.

⟦(c)(1) For the purposes of basic pay any person appointed under this section to the grade of lieutenant or lieutenant (junior grade) shall be considered as having, on date of appointment, three years or one and one-half years service respectively.

⟦(2) If a person appointed under this section is entitled to credit for the purpose of basic pay under other provision of law which would exceed that authorized by subsection (c)(1) he shall be credited with that service in lieu of the credit provided by subsection (c)(1).

⟦SEC. 24. (a) The Secretary may designate positions in the Administration as being positions of importance and responsibility for which it is appropriate that commissioned officers of the Administration, if serving in those positions, serve in the grade of vice admiral, rear admiral, or rear admiral (lower half) as designated by the Secretary for each position, and may assign officers to those positions. An officer assigned to any position under this section has the grade designated for that position if appointed to that grade by the President, by and with the advice and consent of the Senate.

⟦(b) The number of officers serving on active duty under appointments under this section may not exceed—

⟦(1) one in the grade of vice admiral;

⟦(2) three in the grade of rear admiral; and

⟦(3) three in the grade of rear admiral (lower half).

⟦(c) An officer appointed to a grade under this section, while serving in that grade, shall have the pay and allowances of the grade to which appointed.

⟦(d) An appointment of an officer under this section—

⟦(1) does not vacate the permanent grade held by the officer, and

⟦(2) creates a vacancy on the active list.

⟦(e) The provisions of section 2(g) of Reorganization Plan Numbered 4 of 1970 (84 Stat. 2090, 5 U.S.C. App.) apply to an officer who serves in a grade above captain under an appointment under this section in the same manner as if the officer served in that grade under section 2(d) or 2(f) of that Reorganization Plan.⟧

ACT OF FEBRUARY 16, 1929

CHAP. 22I—An Act To amend the Act entitled "An Act to readjust the pay and allowances of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service," approved June 10, 1922, as amended

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⟦"SEC. 5. That the Director of the Coast and Geodetic Survey shall be appointed and hold office as now authorized by law; his appointment shall create a vacancy, and while holding said office he shall have the rank, pay, and allowances of a Chief of Bureau of the Navy Department."⟧

ACT OF JANUARY 19, 1942

⟦AN ACT To regulate the distribution and promotion of commissioned officers of the Coast and Geodetic Survey, and for other purposes

⟦*Be it enacted by the Senate and House of representatives of the United States of America in Congress assembled,* That the total number of commissioned officers on the active list of the Coast and Geodetic Survey shall be distributed in rank relative with officers of the Navy in the proportion of five in the grade of captain to eight in the grade of commander, to eighty-seven in the grades of lieutenant commander, lieutenant, lieutenant (junior grade) and ensign, inclusive: *Provided,* That the number of officers in the grade of lieutenant commander shall not exceed 35 per centum of the total authorized number of commissioned officers on the active list.

⟦PROMOTION OF OFFICERS

⟦SEC. 2. (a) Promotions to the grades of captain and commander shall be made as vacancies occur and shall be by selection from the next lower respective grades upon recommendation of the Personnel Board hereinafter authorized.

⟦(b) Except as otherwise provided in this Act, lieutenants, lieutenants (junior grade), and ensigns shall be promoted to the respective grades of lieutenant commander, lieutenant, and lieutenant (junior grade) in the order in which the names appear on the current lineal list hereinafter authorized as the officers become credited with seventeen years', ten years', and three years' service, respectively: *Provided,* That lieutenants with not less than fourteen years' accredited service and lieutenants (junior grade) with not less than seven years' accredited service may be promoted to the grades of lieutenant commander and lieutenant, respectively, at any time in such numbers as will not cause the resulting number of officers in each of the grades of lieutenant commander and lieutenant to exceed 28 per centum of the total authorized force of commissioned officers on the active list: *Provided further,* That for purposes of pay, longevity pay, allowances, promotion, or retirement, which are now or may hereafter be authorized for officers appointed after June 30, 1922, there shall be counted in addition to active commissioned service, service as deck officer and junior engineer in excess of one year.

⟦(c) All promotions, when made, shall be effective from the date of the respective vacancies, and promotions to all grades shall be made by the President, by and with the advice and consent of the Senate.

⟦(d) Each officer shall be assumed to have, for promotion purposes, at least the same length of service as any officer junior to him on the lineal list hereinafter authorized, except that an officer who has lost numbers on the lineal list shall be assumed to have for promotion purposes no greater service than the officer next above him in his new position on the lineal list.

⟦(e) Whenever a final fraction occurs in computing the authorized number of officers of any grade, the nearest whole number shall be regarded as the authorized number: *Provided,* That the total number of officers as authorized by law shall not be increased as a result of the computations prescribed herein, and if necessary the number of officers in the lowest grade shall be reduced accordingly: *Provided further,* That no officer shall be reduced in grade or pay or separated from the active list as the result of any computations made to determine the authorized number of officers in the various grades.

⟦PERSONNEL BOARD

⟦SEC. 3. At least once a year and at such other times as may be necessary, the Secretary of Commerce shall appoint and convene a Personnel Board consisting of not less than five officers not below the rank of commander on the active list of the Coast and Geodetic Survey, to make the computations prescribed herein, to prepare and maintain a lineal list on which the names of all officers on the active list shall be arranged in such order as the board may determine, and to make selections and recommendations for the promotion and retirement of officers as herein prescribed.

⟦SEC. 4. Each report of the Personnel Board shall be submitted to the President for approval or disapproval: *Provided,* That in case any recommendation by the board is not acceptable to the President, the board shall be so informed and shall make such further recommendations as shall be acceptable to the President and, if necessary, the board shall be reconvened for this purpose: *Provided* *further*, That when the report of the board shall have been approved, the recommendations therein shall be carried out in accordance with the provisions of this Act.

[RETIREMENT OF OFFICERS

[SEC. 5. The President may transfer to the retired list from the grades of captain, commander, lieutenant commander, and lieutenant such officers as have been recommended for retirement by the Personnel Board: *Provided*, That the total number of officers so retired in any fiscal year shall not exceed the whole number nearest 1 per centum of the total authorized number of commissioned officers on the active list, and, except as otherwise required by law, the number of officers so retired plus the number of officers retired for age in any fiscal year shall not exceed 3 per centum of the total authorized number of commissioned officers on the active list: *Provided further*, That all transfers to the retired list pursuant to this Act shall become effective on the next ensuing July 1 and the resulting vacancies may be filled as of that date.

[SEC. 6. Officers retired pursuant to section 5 of this Act shall receive pay at the rate of 2½ per centum of their active-duty pay at the time of retirement multiplied by the number of years of service for which entitled to credit in the computation of their pay on the active list, not to exceed a total of 75 per centum of said active-duty pay: *Provided*, That a fractional year of six months or more shall be considered a full year in computing the number of years' service by which the rate of 2½ per centum is multiplied.

[SEC. 7. Should an officer fail in his physical examination for promotion and be found incapacitated for service by reason of physical disability contracted in line of duty, he shall be retired with the rank to which he would otherwise be entitled to be promoted, with retired pay at the rate of 75 per centum of the active-duty pay of that grade.

[MISCELLANEOUS PROVISIONS

[SEC. 8. The President is authorized to appoint, by and with the advice and consent of the Senate, an officer on the active list of the Coast and Geodetic Survey not below the rank of commander to serve as Assistant Director; his appointment shall not create a vacancy and while holding said office he shall have the rank, pay, and allowances of rear admiral (lower half): *Provided*, That any officer who may be retired while serving as Director or Assistant Director, or who has or shall have served four years as Director or Assistant Director and is retired after completion of such service while serving in a lower rank or grade, shall be retired with the rank, pay, and allowances authorized by law for the highest grade or rank held by him as Director or Assistant Director.

[SEC. 9. The provisions of sections 1 to 5, inclusive, of the Act of April 20, 1940 (54 Stat. 144), relating to the burial expenses of Navy personnel, and the provisions of the Act of June 4, 1920 (41 Stat. 824), as amended by the Act of May 22, 1928 (45 Stat. 710), relating to the payment of a death gratuity to dependents of commissioned officers and other personnel of the Navy or Marine Corps, shall apply to commissioned officers of the Coast and Geodetic Survey, except that the duties and obligations imposed in said

Acts upon the Secretary of the Navy are hereby imposed for the purposes of this Act upon the Secretary of Commerce who shall cause the necessary payments to be made from funds appropriated for the Coast and Geodetic Survey: *Provided*, That the provisions of this section shall be effective from December 8, 1941.

⟦SEC. 10. Commissioned officers, ships' officers, and members of the crews of vessels of the Coast and Geodetic Survey shall be permitted to purchase commissary and quartermaster supplies as far as available from the Army, Navy, or Marine Corps at the prices charged officers and enlisted men of those services.

⟦SEC. 11. All laws or parts of laws inconsistent with the provisions of this Act are hereby repealed, and the provisions of this Act shall be in effect in lieu thereof.⟧

SECTION 9 OF PUBLIC LAW 87–649

AN ACT To revise, codify, and enact title 37 of the United States Code, entitled "Pay and Allowances of the Uniformed Services"

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AMENDMENTS TO CERTAIN LAWS APPLICABLE TO COAST AND GEODETIC SURVEY

⟦SEC. 9. (a) Section 3(a) of the Act of August 10, 1956, ch. 1041, as amended (33 U.S.C. 857a(a)), is amended by adding the following new clause at the end thereof:

⟦"(10) Chapter 40. Leave."

⟦(b) The Act of June 3, 1948, ch. 390, as amended, is further amended as follows:

⟦(1) Section 9 (33 U.S.C. 853h) is amended by striking out the words "active-duty pay with longevity credit" wherever they appear and inserting the words "basic pay" in place thereof.

⟦(2) Section 16(a) (33 U.S.C. 853*o*(a)) is amended by striking out the words "active-duty pay with longevity credit" wherever they appear and inserting the words "basic pay" in place thereof.

⟦(c) Active service in the Coast and Geodetic Survey as a deck officer or junior engineer and active service counted on June 30, 1922, for longevity pay, shall be credited to commissioned officers as active commissioned service for purposes of retirement and retirement pay.⟧

ACT OF MAY 22, 1917

CHAP. 20.—An Act To temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps, and for other purposes

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⟦SEC. 16. The President is authorized, whenever in his judgment a sufficient national emergency exists, to transfer to the service and jurisdiction of a military department such vessels, equipment, stations, and commissioned officers of the Environmental Science Services Administration as he may deem to the best interest of the country, and after such transfer all expenses connected therewith shall be defrayed out of the appropriations for the department to which transfer is made: *Provided*, That such vessels, equipment, stations, and commissioned officers shall be returned to the Environmental Science Services Administration when such national emergency ceases, in the opinion of the President, and nothing in this section shall be construed as transferring the Environmental Science Services Administration or any of its functions from the Department of Commerce except in time of national emergency and to the extent herein provided: *Provided further*, That any of the commissioned officers of the Environmental Science Services Administration who may be transferred as provided in this section, shall, while under the jurisdiction of a military department, have proper military status and shall be subject to the laws, regulations, and orders for the government of the Army, Navy, or Air Force, as the case may be, insofar as the same may be applicable to persons whose retention permanently in the military service of the United States is not contemplated by law.

⟦Nothing in this Act shall reduce the total amount of pay and allowances they were receiving at the time of transfer. While actually employed in active service under direct orders of the War Department or of the Navy Department members of the Coast and Geodetic Survey shall receive the benefit of all provisions of laws relating to disability incurred in line of duty or loss of life.

⟦When serving with the Army, Navy, or Air Force, commissioned officers of the Coast and Geodetic Survey shall rank with and after officers of corresponding grade in the Army, Navy, or Air Force of the same length of service in grade.

⟦And nothing in this act shall be construed to affect or alter their rates of pay and allowances when not assigned to military duty as hereinbefore mentioned.

⟦The Secretary of Defense and the Secretary of Commerce shall jointly prescribe regulations governing the duties to be performed by the Environmental Science Services Administration in time of war, and for the cooperation of that service with the military departments in time of peace in preparation for its duties in war, which regulations shall not be effective unless approved by each of those Secretaries, and included therein may be rules and regulations for making reports and communications between a military department and the Environmental Science Services Administration.⟧

ACT OF DECEMBER 3, 1942

⟦AN ACT Authorizing the temporary appointment or advancement of commissioned officers of the Coast and Geodetic Survey in time of war or national emergency, and for other purposes

⟦*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, Personnel of the Environmental Science Services Administration shall be subject in like manner and to the same extent as personnel of the Navy to all laws authorizing temporary appointment or advancement of commissioned officers in time of war or national emergency subject to the following limitations:

⟦(1) Commissioned officers in the service of a military department, under the provisions of section 16 of the Act of May 22, 1917 (40 Stat. 87), as amended, may, upon the recommendation of the Secretary of the military department concerned, be temporarily promoted to higher ranks or grades.

⟦(2) Commissioned officers in the service of the Environmental Science Services Administration may be temporarily promoted to fill vacancies in ranks and grades caused by the transfer of commissioned officers to the service and jurisdiction of a military department under the provisions of section 16 of the Act of May 22, 1917 (40 Stat. 87), as amended.

⟦(3) Temporary appointments may be made in all grades to which original appointments in the Environmental Science Services Administration are authorized: *Provided*, That the number of officers holding temporary appointments shall not exceed the number of officers transferred to a military department under the provisions of section 16 of the Act of May 22, 1917 (40 Stat. 87), as amended.

⟦SEC. 3. Any commissioned officer of the Coast and Geodetic Survey promoted to a higher grade at any time after December 7, 1941, shall be deemed for all purposes to have accepted his promotion to higher grade upon the date such promotion is made by the President, unless he shall expressly decline such promotion, and shall receive the pay and allowances of the higher grade from such date unless he is entitled under some other provision of law to receive the pay and allowances of the higher grade from an earlier date. No such officer who shall have subscribed to the oath of office required by section 1757, Revised Statutes, shall be required to renew such oath or to take a new oath upon his promotion to a higher grade, if his service after the taking of such an oath shall have been continuous.⟧

Public Law 91–621

AN ACT To clarify the status and benefits of commissioned officers of the National Oceanic and Atmospheric Administration, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

⟦SECTION 1. Definitions listed in section 101 of title 10, United States Code, apply to this Act, except as noted below:

⟦(1) "active duty" means full-time duty in the active service of a uniformed service;

⟦(2) "Administration" means the National Oceanic and Atmospheric Administration;

⟦(3) "grade" means a step or degree, in a graduated scale of office or rank, that is established and designated as a grade by law or regulation;

⟦(4) "officer" means a commissioned officer;

⟦(5) "Secretary" means the Secretary of Commerce;

⟦(6) "Secretary concerned" is defined in section 101 of title 37, United States Code;

⟦(7) "uniformed services" is defined in section 101 of title 37, United States Code.

⟦SEC. 2. Each officer retired pursuant to any provision of law shall be placed on the retired list with the highest grade satisfactorily held by him while on active duty including active duty pursuant to recall, under permanent or temporary appointment, and he shall receive retired pay based on such highest grade: *Provided*, That his performance of duty in such highest grade has been satisfactory, as determined by the Secretary of the department or departments under whose jurisdiction the officer served, and, unless retired for disability, his length of service in such highest grade is no less than that required by the Secretary of officers retiring under permanent appointment in that grade.

⟦SEC. 3. (a) Active service of officers of the Administration shall be deemed to be active military service in the armed forces of the United States for the purposes of all rights, privileges, immunities, and benefits now or hereafter provided by—

⟦(1) laws administered by the Secretary of Veterans Affairs;

⟦(2) laws administered by the Interstate Commerce Commission; and

⟦(3) the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

In the administration of these laws and regulations, with respect to the National Oceanic and Atmospheric Administration, the authority vested in the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy and the Secretary of the Air Force and their respective departments shall be exercised by the Secretary of Commerce.

⟦(b) The Secretary may provide medical and dental care, including care in private facilities, for personnel of the Administration entitled to that care by law or regulation.

⟦SEC. 4. (a) Commissioned officers, ships' officers, and members of crews of vessels of the Administration shall be permitted to purchase commissary and quartermaster supplies as far as available from the armed forces at the prices charged officers and enlisted men of those services.

⟦(b) The Secretary may purchase ration supplies for messes, stores, uniforms, accouterments, and related equipment for sale aboard ship and shore stations of the Administration to members of the uniformed services and to personnel assigned to such ships or shore stations. Sales shall be in accordance with regulations prescribed by the secretary, and proceeds therefrom shall, as far as is practicable, fully reimburse the appropriations charged without regard to fiscal year.

⟦(c) Rights extended to members of the uniformed services in this section are extended to their widows and to such others as are designated by the Secretary concerned.

⟦SEC. 5. (a) All statutes that applied to commissioned officers of the Coast and Geodetic Survey on July 12, 1965, shall apply to officers of the Environmental Science Services Administration on that date and subsequent thereto, unless amended or repealed, and service as a commissioned officer in the Coast and Geodetic Survey shall constitute service as a commissioned officer in the Environmental Science Services Administration.

⟦(b) All statutes that applied to commissioned officers of the Coast and Geodetic Survey on July 12, 1965, and to commissioned officers of the Environmental Science Services Administration subsequent to that date shall apply to officers of the National Oceanic and Atmospheric Administration on October 3, 1970, and subsequent thereto, unless amended or repealed, and service as a commissioned officer in the Coast and Geodetic Survey or the Environmental Science Services Administration shall constitute service as a commissioned officer in the National Oceanic and Atmospheric Administration.

⟦(c) The enactment of this Act does not increase or decrease the pay or allowances of any person.

⟦(d) A reference to a law replaced by this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provisions enacted by this Act.

⟦(e) An order, rule, or regulation in effect under a law replaced by this Act continues in effect under the corresponding provisions enacted by this Act until repealed, amended, or superseded.

⟦(f) An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of the caption or catchline thereof.

⟦(g) If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.⟧

ACT OF AUGUST 10, 1956

AN ACT To revise, codify, and enact into law, title 10 of the United States Code, entitled "Armed Forces", and title 32 of the United States Code, entitled "National Guard"

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⟦PARTS OF TITLE 10 ADOPTED FOR COAST AND GEODETIC SURVEY

⟦SEC. 3. (a) The rules of law that apply to the Armed Forces under the following provisions of title 10, Armed Forces, United States Code, including changes in those rules made after the effective date of this Act, apply also to the Coast and Geodetic Survey:

⟦(1) Section 1036, Escorts for dependents of members: transportation and travel allowances.

⟦(2) Chapter 61, Retirement or Separation for Physical Disability.

⟦(3) Chapter 69, Retired Grade, except sections 1370, 1374, 1375, and 1376(a).

⟦(4) Chapter 71, Computation of Retired Pay, except formula No. 3 of section 1401.

⟦(5) Chapter 78, Retired Serviceman's Family Protection Plan; Survivor Benefit Plan.

⟦(6) Chapter 75, Death Benefits.;

⟦(7) Section 2771, Final settlement of accounts: deceased members.

⟦(8) Sections 2731, 2732, and 2735, property loss incident to service.

⟦(9) Such other provisions of subtitle A as may be adopted for applicability to the Coast and Geodetic Survey by any other provision of law.

⟦(10) Chapter 30. Leave.

⟦(11) Section 2634, Motor vehicles: for members on permanent change of station.

⟦(12) Section 1035, Deposits of Savings.

⟦(13) Section 716, Commissioned officers: transfers among the Armed Forces, the National Oceanic and Atmospheric Administration, and the Public Health Service.

⟦(14) Section 7572(b), Quarters: accommodations in place of or for members on sea duty.

⟦(b) The authority vested by title 10, United States Code, in the "military departments", "Secretary concerned", or "the Secretary of Defense" with respect to the provisions of law referred to in subsection (a) shall be exercised, with respect to the Coast and Geodetic Survey, by the Secretary of Commerce or his designee.⟧

ACT OF MAY 18, 1920

CHAP. 190.—An Act To increase the efficiency of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service

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⟦SEC. 11. That in lieu of compensation now prescribed by law, commissioned officers of the Coast and Geodetic Survey, shall receive the same pay and allowances as now are or hereafter may be prescribed for officers of the Navy with whom they hold relative rank as prescribed in the Act of May 22, 1917, entitled "An Act to temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps, and for other purposes," including longevity; and all laws relating to the retirement of commissioned officers of the Navy shall hereafter apply to commissioned officers of the Coast and Geodetic Survey: *Provided*, That hereafter longevity pay for officers in the Army, Navy, Marine Corps, Coast Guard, Public Health Service, and Coast and Geodetic Survey shall be based on the total of all service in any or all of said services.⟧

ACT OF JULY 22, 1947

⟦AN ACT To provide basic authority for the performance of certain functions and activities of the Coast and Geodetic Survey, and for other purposes

⟦*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Coast and Geodetic Survey is hereby authorized to provide, from appropriations now or hereafter made available to the Survey, for—

⟦(a) Transportation (including packing, unpacking, crating, and uncrating) of personal and household effects of commissioned officers who die on active duty to the official residence of record for such officers, or, upon application by their dependents, to such other locations as may be determined by the Director of the Coast and Geodetic Survey or by such person as he may designate.

⟦(b) Reimbursement, under regulations prescribed by the Secretary, of commissioned officers for food, clothing, medicines, and other supplies furnished by them for the temporary relief of distressed persons in remote localities and to shipwrecked persons temporarily provided for by them.

⟦SEC. 2. The Secretary of Commerce is hereby authorized to pay extra compensation to members of crews of vessels when assigned duties as instrument observer or recorder, and to employees of other Federal agencies while observing tides or currents, or tending seismographs or magnetographs, at such rates as may be specified from time to time by him, and without regard to section 301 of the Dual Compensation Act.⟧

ACT OF AUGUST 3, 1956

AN ACT To authorize officers of the Coast and Geodetic Survey to act as notaries in places outside the United States

⟦*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, in places where the Coast and Geodetic Survey is serving which are not within the jurisdiction of any one of the States of the continental United States, excluding Alaska, commanding officers of Coast and Geodetic Survey vessels, and such other officers of the Coast and Geodetic Survey as the Secretary of Commerce may designate, may exercise the general powers of the notary public in the administration of oaths for the execution, acknowledgment, and attestation of instruments and papers, and the performance of all other notarial acts. The powers hereby conferred shall be limited to acts performed in behalf of the personnel of the Coast and Geodetic Survey or in connection with the proper execution of the functions of that agency

⟦SEC. 2. No fee of any kind shall be paid to any officer for the performance of any notarial act herein authorized. The signature without seal together with indication of grade of any officer performing any notarial act shall be prima facie evidence of his authority.⟧

OCEAN THERMAL CONVERSION ACT OF 1980

⟦AN ACT To regulate commerce, promote energy self-sufficiency, and protect the environment by establishing procedures for the location, construction, and operation of ocean thermal energy conversion facilities and plantships to produce electricity and energy-intensive products off the coasts of the United States; to amend the Merchant Marine Act, 1936, to make available certain financial assistance for construction and operation of such facilities and plantships; and for other purposes

⟦*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Ocean Thermal Energy Conversion Act of 1980".

⟦SEC. 2. DECLARATION OF POLICY.

⟦(a) It is declared to be the purposes of the Congress in this Act to—

⟦(1) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion facilities connected to the United States by pipeline or cable, or located in whole or in part between the highwater mark and the seaward boundary of the territorial sea of the United States consistent with the Convention on the High Seas, and general principles of international law;

[(2) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion plantships documented under the laws of the United States, consistent with the Convention on the High Seas and general principles of international law;

[(3) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion plantships by United States citizens, consistent with the Convention on the High Seas and general principles of international law;

[(4) establish a legal regime which will permit and encourage the development of ocean thermal conversion as a commercial energy technology;

[(5) provide for the protection of the marine and coastal environment, and consideration of the interests of ocean users, to prevent or minimize any adverse impact which might occur as a consequence of the development of such ocean thermal energy conversion facilities or plantships;

[(6) make applicable certain provisions of the Merchant Marine Act, 1936 (46 U.S.C. 1177 et seq.) to assist in financing of ocean thermal energy conversion facilities and plantships;

[(7) protect the interests of the United States in the location, construction, and operation of ocean thermal energy conversion facilities and plantships; and

[(8) protect the rights and responsibilities of adjacent coastal States in ensuring that Federal actions are consistent with approved State coastal zone management programs and other applicable State and local laws.

[(b) The Congress declares that nothing in this Act shall be construed to affect the legal status of the high seas, the superjacent airspace, or the sealed and subsoil, including the Continental Shelf.

[SEC. 3. DEFINITIONS.

[As used in this Act, unless the context otherwise requires, the term—

[(1) "adjacent coastal State" means any coastal State which is required to be designated as such by section 105(a)(1) of this Act or is designated as such by the Administrator in accordance with section 105(a)(2) of this Act;

[(2) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration;

[(3) "antitrust laws" includes the Act of July 2, 1890, as amended, the Act of October 15, 1914, as amended, and sections 73 and 74 of the Act of August 27, 1894, as amended;

[(4) "application" means any application submitted under this Act (A) for issuance of a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship; (B) for transfer or renewal of any such license; or (C) for any substantial change in any of the conditions and provisions of any such license;

⟦(5) "coastal State" means a State in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes;

⟦(6) "construction" means any activities conducted at sea to supervise, inspect, actually build, or perform other functions incidental to the building, repairing, or expanding of an ocean thermal energy conversion facility or plantship or any of its components, including but not limited to, piledriving, emplacement of mooring devices, emplacement of cables and pipelines, and deployment of the cold water pipe, and alterations, modifications, or additions to an ocean thermal energy conversion facility or plantship;

⟦(7) "facility" means an ocean thermal energy conversion facility;

⟦(8) "Governor" means the Governor of a State or the person designated by law to exercise the powers granted to the Governor pursuant to this Act;

⟦(9) "high seas" means that part of the oceans lying seaward of the territorial sea of the United States and outside the territorial sea, as recognized by the United States, of any other nation;

⟦(10) "licensee" means the holder of a valid license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship that was issued, transferred, or renewed pursuant to this Act;

⟦(11) "ocean thermal energy conversion facility" means any facility which is standing, fixed or moored in whole or in part seaward of the highwater mark and which is designed to use temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, fresh water, or product to shore, and all other associated equipment and appurtenances of such facility, to the extent they are located seaward of the highwater mark;

⟦(12) "ocean thermal energy conversion plantship" means any vessel which is designed to use temperature differences in ocean water while floating unmoored or moving through such water, to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such vessel to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any equipment used to transfer such product to other vessels for transportation to users, and all other associated equipment and apputenances of such vessel;

⟦(13) "plantship" means an ocean thermal energy conversion plantship;

⟦(14) "person" means any individual (whether or not a citizen of the United States), any corporation, partnership, association, or other entity organized or existing under the laws of any nation, and any Federal, State, local or foreign government or any entity of any such government;

⟦(15) “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and any other Commonwealth, territory, or possession over which the United States has jurisdiction;

⟦(16) “test platform” means any floating or moored platform, barge, ship, or other vessel which is designed for limited-scale, at sea operation in order to test or evaluate the operation of components or all of an ocean thermal energy conversion system and which will not operate as an ocean thermal energy conversion facility or plantship after the conclusion of such tests or evaluation;

⟦(17) “thermal plume; means the area of the ocean in which a significant difference in temperature, as defined in regulations by the Administrator, occurs as a result of the operation of an ocean thermal energy conversion facility or plantship; and

⟦(18) “United States citizen” means (A) any individual who is a citizen of the United States by law, birth, or naturalization; (B) any Federal, State, or local government in the United States, or any entity of any such government; or (C) any corporation, partnership, association, or other entity, organized or existing under the laws of the United States, or of any State, which has as its president or other executive officer and as its chairman of the board of directors, or holder of similar office, an individual who is a United States citizen and which has no more of its directors who are not United States citizens than constitute a minority of the number required for a quorum necessary to conduct the business of the board.

⟦TITLE I—REGULATION OF OCEAN THERMAL ENERGY CONVERSION FACILITIES AND PLANTSHIPS

⟦SEC. 101. LICENSE FOR THE OWNERSHIP, CONSTRUCTION, AND OPERATION OF AN OCEAN THERMAL ENERGY CONVERSION FACILITY OR PLANTSHIP.

⟦(a) No person may engage in the ownership, construction, or operation of an ocean thermal energy conversion facility which is documented under the laws of the United States, which is located in whole or in part between the highwater mark and the seaward boundary of the territorial sea of the United States, or which is connected to the United States by pipeline or cable, except in accordance with a license issued pursuant to this Act. No citizen of the United States may engage in the ownership, construction or operation of an ocean thermal energy conversion plantship except in accordance with a license issued pursuant to this Act, or in accordance with a license issued by a foreign nation whose licensees are found by the Administrator, after consultation with the Secretary of State, to be compatible with licenses issued pursuant to this Act.

⟦(b) The Administrator shall, upon application and in accordance with the provisions of this Act, issue, transfer, amend, or renew licenses for the ownership, construction, and operation of—

⟦(1) ocean thermal energy conversion plantships documented under the laws of the United States, and

⟦(2) ocean thermal energy conversion facilities documented under the laws of the United States, located in whole or in part between the highwater mark and the seaward boundary of the territorial sea of the United States, or connected to the United States by pipeline or cable

⟦(c) The Administrator may issue a license to a citizen of the United States in accordance with the provisions of this Act unless—

⟦(1) he determines that the applicant cannot or will not comply with applicable laws, regulations, and license conditions;

⟦(2) he determines that the construction and operation of the ocean thermal energy conversion facility or plantship will not be in the national interest and consistent with national security and other national policy goals and objectives, including energy self-sufficiency and environmental quality;

⟦(3) he determines, after consultation with the Secretary of the department in which the Coast Guard is operating, that the ocean thermal energy conversion facility or plantship will not be operated with reasonable regard to the freedom of navigation or other reasonable uses of the high seas and authorized uses of the Continental Shelf, as defined by United States law, treaty, convention, or customary international law;

⟦(4) he has been informed, within 45 days after the conclusion of public hearings on that application, or on proposed licenses for the designated application area, by the Administrator of the Environmental Protection Agency that the ocean thermal energy conversion facility of plantship will not conform with all applicable provisions of any law for which he has regulatory authority;

⟦(5) he has received the opinion of the Attorney General, pursuant to section 104 of this Act, stating that issuance of the license would create a situation not in violation of the antitrust laws, or the 90-day period provided in section 104 has not expired;

⟦(6) he has consulted with the Secretary of Energy, the Secretary of Transportation, the Secretary of State, the Secretary of the Interior, and the Secretary of Defense, to determine their views on the adequacy of the application, and its effect on programs within their respective jurisdictions and determines on the basis thereof, that the application for a license is inadequate;

⟦(7) the proposed ocean thermal energy conversion facility or plantship will be documented under the laws of a foreign nation;

⟦(8) the applicant has not agreed to the condition that no vessel may be used for the transportation to the United States of things produced, processed, refined, or manufactured at the ocean thermal energy conversion facility or plantship unless such vessel is documented under the laws of the United States;

⟦(9) when the license is for an ocean thermal energy conversion facility, he determines that the facility, including any submarine electric transmission cables and equipment or pipelines which are components of the facility, will not be located and designed so as to minimize interference with other uses of the high seas or the Continental Shelf, including cable or pipelines already in position on or in the seabed and the possibility of their repair;

⟦(10) the Governor of any adjacent coastal State with an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq., determines that, in his or her view, the application is inadequate or inconsistent with respect to programs within his or her jurisdiction;

⟦(11) when the license is for an ocean thermal energy conversion facility, he determines that the thermal plume of the facility is expected to impinge on so as to degrade the thermal gradient used by any other ocean thermal energy conversion facility already licensed or operating, without the consent of its owner;

⟦(12) when the license is for an ocean thermal energy conversion facility, he determines that the thermal plume of the facility is expected to impinge on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other National, unless the Secretary of State approves such impingement after consultation with such Nation;

⟦(13) when the license is for an ocean thermal energy conversion plantship, he determines that the applicant has not provided adequate assurance that the plantship will be operated in such a way as to prevent its thermal plume from impinging on so as to degrade the thermal gradient used by other ocean thermal energy conversion facility or plantship without the consent of its owner, and from impinging on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other Nation unless the Secretary of State approves such impingement after consultation with such Nation; or

⟦(14) if a regulation has been adopted which places an upper limit on the number or total capacity of ocean thermal energy conversion facilities or plantships to be licensed under this Act for simultaneous operation, either overall or within specific geographic areas, pursuant to a determination under the provisions of section 107(b)(4) of this Act, issuance of the license will cause such upper limit to be exceeded.

⟦(d)(1) In issuing a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship, the Administrator shall prescribe conditions which he deems necessary to carry out the provisions of this Act, or which are otherwise required by any Federal department or agency pursuant to the terms of this Act.

⟦(2) No license shall be issued, transferred, or renewed under this Act unless the applicant, licensee, or transferee first agrees in writing that (A) there will be no substantial change from the plans, operational systems, and methods, procedures, and safeguards set forth in his application, as approved, without prior approval in writing from the Administrator, and (B) he will comply with conditions the Administrator may prescribe in accordance with the provisions of this Act.

⟦(3) The Administrator shall establish such bonding requirements other assurances as he deems necessary to assure that, upon the revocation, termination, relinquishment, or surrender of a license, the licensee will dispose of or remove all components of the ocean thermal energy conversion facility or plantship as directed by the Administrator. In the case of components which another applicant or licensee desires to use, the Administrator may waive the disposal or removal requirements until he has reached a decision on the application. In the case of components lying on or below the sealed, the Administrator may waive the disposal or removal requirements if he finds that such removal is not otherwise necessary and that the remaining components do not constitute any threat to the environment, navigation, fishing, or other uses of the seabed.

⟦(e) Upon application, a license issued under this Act may be transferred if the Administrator determines that such transfer is in the public interest and that the transferee meets the requirements of this Act and the prerequisites to issuance under subsection (c) of this section.

⟦(f) Any United States citizen who otherwise qualifies under the terms of this Act shall be eligible to be issued a license for the ownership, construction, and operation or an ocean thermal energy conversion facility or plantship.

⟦(g) Licenses issued under this Act shall be for a term of not to exceed 25 years. Each licensee shall have a preferential right to renew his license subject to the requirements of subsection (c) of this section, upon such conditions and for such terms, not to exceed an additional 10 years upon each renewal, as the Administrator determines to be reasonable and appropriate.

⟦SEC. 102. PROCEDURE.

⟦(a) The Administrator shall, after consultation with the Secretary of Energy and the heads of other Federal agencies, issue regulations to carry out the purposes and provisions of this Act, in accordance with the provisions of section 553 of title 5, United States Code, without regard to subsection (a) thereof. Such regulations shall pertain to, but need not be limited to, application for issuance, transfer, renewal, suspension, and termination of licenses. Such regulations shall provide for full consultation and cooperation with all other interested Federal agencies and departments and with any potentially affected coastal State, and for consideration of the views of any interested members of the general public. The Administrator is further authorized, consistent with the purposes and provisions of this Act, to amend or rescind any such regulations. The Administrator shall complete issuance of final regulations to implement this Act within 1 year of the date of its enactment.

⟦(b) The Administrator, in consultation with the Secretary of the Interior and the Secretary of the department in which the Coast Guard is operating may, if he determines it to be necessary, prescribe regulations consistent with the purposes of this Act, relating to those activities in site evaluation and preconstruction testing at potential ocean thermal energy conversion facility or plantship locations that may (1) adversely affect the environment; (2) interfere with other reasonable uses of the high seas or with authorized uses of the Outer Continental Shelf; or (3) pose a threat to human health and safety. If the Administrator prescribes regulations relating to such activities, such activities may not be undertaken after the effective date of such regulations except in accordance therewith.

[(c) Not later than 60 days after the date of enactment of this Act, the Secretary of Energy, the Administrator of the Environmental Protection Agency, the Secretary of the department in which the Coast Guard is operating, the Secretary of the Interior, the Chief of Engineers of the United States Army Corps of Engineers, and the heads of any other Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the construction or operation of ocean thermal energy conversion facilities or plantships, shall transmit to the Administrator written description of their expertise or statutory responsibilities pursuant to this Act or any other Federal law.

[(d)(1) Within 21 days after the receipt of an application, the Administrator shall determine whether the application appears to contain all of the information required by paragraph (2) of this subsection. If the Administrator determines that such information appears to be contained in the application, the Administrator shall, no later than 5 days after making such a determination, publish notice of the application and a summary of the plans in the Federal Register. If the Administrator determines that all of the required information does not appear to be contained in the application, the Administrator shall notify the applicant and take no further action with respect to the application until such deficiencies have been remedied.

[(2) Each application shall include such financial, technical, and other information as the Administrator determines by regulation to be necessary or appropriate to process the license pursuant to section 101.

[(e)(1) At the time notice of an application for an ocean thermal energy conversion facility is published pursuant to subsection (d) of this section, the Administrator shall publish a description in the Federal Register of an application area encompassing the site proposed in the application for such facility and within which the thermal plume of one ocean thermal energy conversion facility might be expected to impinge on so as to degrade the thermal gradient used by another ocean thermal energy conversion facility, unless the application is for a license for an ocean thermal energy conversion facility to be located within an application area which has already been designated.

[(2) The Administrator shall accompany such publication with a call for submission of any other applications for licenses for the ownership, construction, and operation of an ocean thermal energy conversion facility within the designated application area. Any person intending to file such an application shall submit a notice of intent to file an application to the Administrator not later than 60 days after the publication of notice pursuant to subsection (d) of this section, and shall submit the completed application no later than 90 days after publication of such notice. The Administrator shall publish notice of any such application received in accordance with subsection (d) of this section. No application for a license for the ownership, construction, and operation of an ocean thermal energy conversion facility within the designated application area for which a notice of intent to file was received after such 60-day period, or which is received after such 90-day period has elapsed, shall be considered until action has been completed on all timely filed applications pending with respect to such application area.

⟦(f) An application filed with the Administrator shall constitute an application for all Federal authorizations required for ownership, construction, and operation of an ocean thermal energy conversion facility or plantship, except for authorizations required by documentation, inspection, certification, construction, and manning laws and regulations administered by the Secretary of the department in which the Coast Guard is operating. At the time notice of any application is published pursuant to subsection (d) of this section, the Administrator shall forward a copy of such application to those Federal agencies and departments with jurisdiction over any aspect of such ownership, construction, or operation for comment, review, or recommendation as to conditions and for such other action as may be required by law. Each agency or department involved shall review the application and, based upon legal considerations within its area of responsibility, recommend to the Administrator the approval or disapproval of the application not later than 45 days after public hearings are concluded pursuant to subsection (g) of this section. In any case in which an agency or department recommends disapproval, it shall set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall notify the Administrator of the manner in which the application may be amended or the license conditioned so as to bring it into compliance with the law or regulation involved.

⟦(g) A license may be issued, transferred, or renewed only after public notice, opportunity for comment, and public hearings in accordance with this subsection. At least one such public hearing shall be held in the District of Columbia and in any adjacent coastal State to which a facility is proposed to be directly connected by pipeline or electric transmission cable. Any interested person may present relevant material at any such hearing. After the hearings required by this subsection are concluded, if the Administrator determines that there exist one or more specific and material factual issues which may be resolved by a formal evidentiary hearing, at least one adjudicatory hearing shall be held in the District of Columbia in accordance with the provisions of section 554 of title 5, United States Code. The record developed in any such adjudicatory hearing shall be part of the basis for the Administrator's decision to approve or deny a license. Hearings held pursuant to this subsection shall be consolidated insofar as practicable with hearings held by other agencies. All public hearings on all applications with respect to facilities for any designated application area shall be consolidated and shall be concluded not later than 240 days after notice of the initial application has been published pursuant to subsection (d) of this section. All public hearings on applications with respect to ocean thermal energy conversion plantships shall be concluded not later than 240 days after notice of the application has been published pursuant to subsection (d) of this section.

[(h) The Administrator shall not take final action on any application unless the applicant has paid to the Administrator a reasonable administrative fee, which shall be deposited into miscellaneous receipts of the Treasury. The amount of the fee imposed by the Administrator on any applicant shall reflect the reasonable administrative costs incurred by the National Oceanic and Atmospheric Administration in reviewing and processing the application.

[(i)(1) The Administrator shall approve or deny any timely filed application with respect to a facility for a designated application area submitted in accordance with the provision of this Act not later than 90 days after public hearings on proposed licenses for that area are concluded pursuant to subsection (g) of this section. The Administrator shall approve or deny an application for a license for ownership, construction, and operation of an ocean thermal energy conversion plantship submitted pursuant to this Act no later than 90 days after the public hearings on that application are concluded pursuant to subsection (g) of this section.

[(2) In the event more than one application for a license for ownership, construction, and operation of an ocean thermal energy conversion facility is submitted pursuant to this Act for the same designated application area, the Administrator, unless one or a specific combination of the proposed facilities clearly best serves the national interest, shall make decisions on license applications in the order in which they were submitted to him.

[(3) In determining whether any one or a specific combination of the proposed ocean thermal energy conversion facilities clearly best serves the national interest, the Administrator, in consultation with the Secretary of Energy, shall consider the following factors:

[(A) the goal of making the greatest possible use of ocean thermal energy conversion by installing the largest capacity practicable in each application area;

[(B) the amount of net energy impact of each of the proposed ocean thermal energy conversion facilities;

[(C) the degree to which the proposed ocean thermal energy conversion facilities will affect the environment;

[(D) any significant differences between anticipated dates and commencement of operation of the proposed ocean thermal energy conversion facilities; and

[(E) any differences in costs of construction and operation of the proposed ocean thermal energy conversion facilities, to the extent that such differentials may significantly affect the ultimate cost of energy or products to the consumer.

SEC. 103. PROTECTION OF SUBMARINE ELECTRIC TRANSMISSION CABLES AND EQUIPMENT.

[(A) Any person who shall willfully and wrongfully break or injure, or attempt to break or injure, or who shall in any manner procure, counsel, aid, abet, or be accessory to such breaking or injury, or attempt to break or injure, any submarine electric transmission cable or equipment being constructed or operated under a license issued pursuant to this Act shall be guilty of a misdemeanor and, on conviction, thereof, shall be liable to imprisonment for a term not exceeding 2 years, or to a fine not exceeding $5,000, or to both fine and imprisonment, at the discretion of the court.

[(b) Any person who by culpable negligence shall break or injure any submarine electric transmission cable or equipment being constructed or operated under a license issued pursuant to his Act shall be guilty of a misdemeanor and, on conviction thereof, shall be liable to imprisonment for a term not exceeding 3 months, or to a fine not exceeding $500, or to both fine and imprisonment, at the discretion of the court.

[(c) The provisions of subsections (a) and (b) of this section shall not apply to any person who, after having taken all necessary precautions to avoid such breaking or injury, breaks or injures any submarine electric transmission cable or equipment in an effort to save the life or limb of himself or of any other person, or to save his own or any other vessel.

[(d) The penalties provided in subsections (a) and (b) of this section for the breaking or injury of any submarine electric transmission cable or equipment shall not be a bar to a suit for damages on account of such breaking or injury.

[(e) Whenever any vessel sacrifices any anchor, fishing net, or other fishing gear to avoid injuring any submarine electric transmission cable or equipment being constructed or operated under a license issued pursuant to this Act, the licensee shall indemnify the owner of such vessel for the items sacrificed: *Provided,* That the owner of the vessel had taken all reasonable precautionary measures beforehand.

[(f) Any licensee who causes any break in or injury to any submarine cable or pipeline of any type shall bear the cost of the repairs.

[SEC. 104. ANTITRUST REVIEW.

[(a) Whenever any application for issuance, transfer, or renewal of any license is received, the Administrator shall transmit promptly to the Attorney General a complete copy of such application. Within 90 days of the receipt of the application, the Attorney General shall conduct such antitrust review of the application as he deems appropriate, and submit to the Administrator any advice or recommendations he deems advisable to avoid any action upon such application by the Administrator which would create a situation inconsistent with the antitrust laws. If the Attorney General fails to file such views within the 90-day period, the Administrator shall proceed as if such views had been received. The Administrator shall not issue, transfer, or renew the license during the 90-day period, except upon written confirmation by the Attorney General that he does not intend to submit any further advice or recommendation on the application during such period.

[(b) The issuance of a license under this Act shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any private right of action under such laws. Nothing in this section shall be construed to bar the Attorney General or the Federal Trade Commission from challenging any anticompetitive situation involved in the ownership, construction, or operation of an ocean thermal energy conversion facility or plantship.

[SEC. 105. ADJACENT COASTAL STATES.

[(a)(1) The Administrator, in issuing notice of application pursuant to section 102(d) of this title, shall designate as an "adjacent coastal State" any coastal State which (A) would be directly connected by electric transmission cable or pipeline to an ocean thermal energy conversion facility as proposed in an application, or (B) in whose waters any part of such proposed ocean thermal energy conversion facility would be located, or (C) in whose waters an ocean thermal energy conversion plantship would be operated as proposed in an application.

[(2) The Administrator shall, upon request of a State, designate such State as an "adjacent coastal State" if he determines (A) that there is a risk of damage to the coastal environment of such State equal to or greater than the risk posed to a State required to be designated as an "adjacent coastal State" by paragraph (1) of this subsection or (B) that the thermal plume of the proposed ocean thermal energy conversion facility or plantship is likely to impinge on so as to degrade the thermal gradient at possible locations for ocean thermal energy conversion facilities which would reasonably be expected to be directly connected by electric transmission cable or pipeline to such State. This paragraph shall apply only with respect to requests made by a State not later than the 14th day after the date of publication of notice of application for a proposed ocean thermal energy conversion facility in the Federal Register in accordance with section 102(d) of this title. The Administrator shall make any designation required by this paragraph not later than the 45th day after the date he receives such a request from a State.

[(b)(1) Not later than 5 days after the designation of an adjacent coastal State pursuant to this section, the Administrator shall transmit a complete copy of the application to the Governor of such State. The Administrator shall not issue a license without consultation with the Governor of each adjacent coastal State which has an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.). If the Governor of such a State has not transmitted his approval or disapproval to the Administrator by the 45th day after public hearings on the application are concluded pursuant to section 102(g) of this title, such approval shall be conclusively presumed. If the Governor of such a State notifies the Administrator that an application which the Governor would otherwise approve pursuant to this paragraph is inconsistent in some respect with the State's coastal zone management program, the Administrator shall condition the license granted so as to make it consistent with such State program.

[(2) Any adjacent coastal State which does not have an approved coastal zone management program in good standing, and any other interested State, shall have the opportunity to make its views known to, and to have them given full consideration by, the Administrator regarding the location, construction, and operation of an ocean thermal energy conversion facility or plantship.

[(c) The consent of Congress is given to 2 or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, (1) to apply for a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship or for the transfer of such a license, and (2) to establish such agencies, joint or otherwise, as are deemed necessary or appropriate for implementing and carrying out the provisions of any such agreement or compact. Such agreement or compact shall be binding and obligatory upon any State or other party thereto without further approval by the Congress.

⟦SEC. 106. DILIGENCE REQUIREMENTS.

⟦(a) The Administrator shall promulgate regulations requiring each licensee to pursue diligently the construction and operation of the ocean thermal energy conversion facility or plantship to which the license applies.

⟦(b) If the Administrator determines that a licensee is not pursuing diligently the construction and operation of the ocean thermal energy conversion facility or plantship to which the license applies, or that the project has apparently been abandoned, the Administrator shall cause proceedings to be instituted under section 111 of this title to terminate the license.

⟦SEC. 107. PROTECTION OF THE ENVIRONMENT.

⟦(a) The Administrator shall initiate a program to assess the effects on the environment of ocean thermal energy conversion facilities and plantships. The program shall include baseline studies of locations where ocean thermal energy conversion facilities or plantships are likely to be sited or operated; and research; and monitoring of the effects of ocean thermal energy conversion facilities and plantships in actual operation. The purpose of the program shall be to assess the environmental effects of individual ocean thermal energy facilities and plantships, and to assess the magnitude of any cumulative environmental effects of large numbers of ocean thermal energy facilities and plantships.

⟦(b) The program shall be designed to determine, among other things—

⟦(1) any short-term and long-term effects on the environment which may occur as a result of the operation of ocean thermal energy conversion facilities and plantships;

⟦(2) the nature and magnitude of any oceanographic, atmospheric, weather, climatic, or biological changes in the environment which may occur as a result of deployment and operation of large numbers of ocean thermal energy conversion facilities and plantships;

⟦(3) the nature and magnitude of any oceanographic, biological or other changes in the environment which may occur as a result of the operation of electric transmission cables and equipment located in the water column or on or in the seabed, including the hazards of accidentally severed transmission cables; and

⟦(4) whether the magnitude of one or more of the cumulative environmental effects of deployment and operation of large numbers of ocean thermal energy conversion facilities and plantships requires that an upper limit be placed on the number or total capacity of such facilities or plantships to be licensed under this Act for simultaneous operation, either overall or within specific geographic areas.

⟦(c) Within 180 days after enactment of this Act, the Administrator shall prepare a plan to carry out the program described in subsections (a) and (b) of this section, including necessary funding levels for the next 5 fiscal years, and submit the plan to the Congress.

⟦(d) The program established by subsections (a) and (b) of this section shall be reduced to the minimum necessary to perform baseline studies and to analyze monitoring data, when the Administrator determines that the program has resulted in sufficient knowledge to make the determinations enumerated in subsection (b) of this section with an acceptable level of confidence.

⟦(e) The issuance of any license for ownership, construction, and operation of an ocean thermal energy conversion facility or plantship shall be deemed to be a major Federal action significantly affecting the quality of the human environment for purposes of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). For all timely applications covering proposed facilities in a single application area, and for each application relating to a proposed plantship, the Administrator shall, pursuant to such section 102(2)(C) and in cooperation with other involved Federal agencies and departments, prepare a single environmental impact statement, which shall fulfill the requirement of all Federal agencies in carrying out their responsibilities pursuant to this Act to prepare an environmental impact statement. Each such draft environmental impact statement relating to proposed facilities shall be prepared and published within 180 days after notice of the initial application has been published pursuant to section 102(d) of this title. Each such draft environmental impact statement relating to a proposed plantship shall be prepared and published within 180 days after notice of the application has been published pursuant to section 102(d) of this title. Each final environmental impact statement shall be published not later than 90 days following the date on which public hearings are concluded pursuant to section 102(g) of this title. The Administrator may extend the deadline for publication of a specific draft or final environmental impact statement to a later specified time for good cause shown in writing.

⟦(f) An ocean thermal energy conversion facility or plantship licensed under this title shall be deemed not to be a "vessel or other floating craft" for the purposes of section 502(12)(B) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1362(12)(B)).

⟦SEC. 108. MARINE ENVIRONMENTAL PROTECTION AND SAFETY OF LIFE AND PROPERTY AT SEA.

⟦(a) The Secretary of the department in which the Coast Guard is operating shall, subject to recognized principles of international law, prescribe by regulation and enforce procedures with respect to any ocean thermal energy conversion facility or plantship licensed under this Act, including, but not limited to, rules governing vessel movement, procedures for transfer of materials between such a facility or plantship and transport vessels, designation and marking of anchorage areas, maintenance, law enforcement, and the equipment, training, and maintenance required (1) to promote the safety of life and property at sea, (2) to prevent pollution of the marine environment, (3) to clean up any pollutants which may be discharged, and (4) to otherwise prevent or minimize any adverse impact from the construction and operation of such ocean thermal energy conversion facility or plantship.

⟦(b) The Secretary of the department in which the Coast Guard is operating shall issue and enforce regulations, subject to recognized principles of international law, with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on any ocean thermal energy conversion facility or plantship licensed under this Act.

⟦(c) Whenever a licensee fails to mark any component of such an ocean thermal energy conversion facility or plantship in accordance with applicable regulations, the Secretary of the department in which the Coast Guard is operating shall mark such components for the protection of navigation, and the licensee shall pay the cost of such marking.

⟦(d)(1) Subject to recognized principles of international law and after consultation with the Secretary of Commerce, the Secretary of the Interior, the Secretary of State, and the Secretary of Defense, the Secretary of the department in which the Coast Guard is operating shall designate a zone of appropriate size around and including any ocean thermal energy conversion facility licensed under this Act and may designate such a zone around and including any ocean thermal energy conversion plantship licensed under this Act for the purposes of navigational safety and protection of the facility or plantship. The Secretary of the department in which the Coast Guard is operating shall by regulation define permitted activities within such zone consistent with the purpose for which it was designated. The Secretary of the department in which the Coast Guard is operating shall, not later than 30 days after publication of notice pursuant to section 102(d) of this title, designate such safety zone with respect to any proposed ocean thermal energy conversion facility or plantship.

⟦(2) In addition to any other regulations, the Secretary of the department in which the Coast Guard is operating is authorized, in accordance with this subsection, to establish a safety zone to be effective during the period of construction of an ocean thermal energy conversion facility or plantship licensed under this Act, and to issue rules and regulations relating thereto.

⟦(3) Except in a situation involving force majeure, a licensee of an ocean thermal energy conversion facility or plantship shall not permit a vessel, registered in or flying the flag of a foreign state, to call at, load or unload cargo at, or otherwise utilize such a facility or plantship licensed under this Act unless (A) the foreign state involved has agreed, by specific agreement with the United States, to recognize the jurisdiction of the United States over the vessel and its personnel, in accordance with the provisions of this Act, while the vessel is located within the safety zone, and (B) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.

⟦(e)(1) The Secretary of the department in which the Coast Guard is operating shall promulgate and enforce regulations specified in paragraph (2) of this subsection and such other regulations as he deems necessary concerning the documentation, design, construction, alteration, equipment, maintenance, repair, inspection, certification, and manning of ocean thermal energy conversion facilities and plantships. In addition to other requirements prescribed under those regulations, the Secretary of the department in which the Coast Guard is operating may require compliance with those vessel documentation, inspection, and manning laws which he determines to be appropriate.

⟦(2) Within 1 year after the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall promulgate regulations under paragraph (1) of this subsection which require that any ocean thermal energy conversion facility or plantship—

⟦(A) be documented;

⟦(B) comply with minimum standards of design, construction, alteration, and repair, and

⟦(C) be manned or crewed by United States citizens or aliens lawfully admitted to the United States for permanent residence, unless—

⟦(i) there is not a sufficient number of United States citizens, or aliens lawfully admitted to the United States for permanent residence, qualified and available for such work, or

⟦(ii) the President makes a specific finding, with respect to the particular vessel, platform, or moored, fixed or standing structure, that application of this requirement would not be consistent with the national interest.

⟦(3) For the purposes of the documentation laws, for which compliance is required under paragraph (1) of this subsection, ocean thermal energy conversion facilities and plantships shall be deemed to be vessels and, if documented, vessels of the United States for the purposes of the Ship Mortgage Act, 1920 (46 U.S.C. 911–984).

⟦(4) For the purposes of this subsection the term "ocean thermal energy conversion facility" refers only to an ocean thermal energy conversion facility which has major components other than water intake or discharge pipes located seaward of the highwater mark.

⟦(f) Subject to recognized principles of international law, the Secretary of the department in which the Coast Guard is operating shall promulgate and enforce such regulations as he deems necessary to protect navigation in the vicinity of a vessel engaged in the installation, repair, or maintenance of any submarine electric transmission cable or equipment, and to govern the markings and signals used by such a vessel.

SEC. 109. PREVENTION OF INTERFERENCE WITH OTHER USES OF THE HIGH SEAS.

⟦(a) Each license shall include such conditions as may be necessary and appropriate to ensure that construction and operation of the ocean thermal energy conversion facility or plantship are conducted with reasonable regard for navigation, fishing, energy production, scientific research, or other uses of the high seas, either by citizens of the United States or by other Nations in their exercise of the freedoms of the high seas as recognized under the Convention of the High Seas and the general principles of international law.

⟦(b) The Administrator shall promulgate regulations specifying under what conditions and in what circumstances the thermal plume of an ocean thermal energy conversion facility or plantship licensed under this Act will be deemed—

⟦(1) to impinge on so as to degrade the thermal gradient used by another ocean thermal energy conversion facility or plantship, or

⟦(2) to impinge on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation.

Such regulations shall also provide for the Administrator to mediate or arbitrate any disputes among licensees regarding the extent to which the thermal plume of one licensee's facility or plantship impinges on the operation of another licensee's facility or plantship.

⟦(c) The Secretary of the department in which the Coast Guard is operating shall promulgate, after consultation with the Administer, and shall enforce, regulations governing the movement and navigation of ocean thermal energy conversion plantships licensed under this Act to ensure that the thermal plume of such an ocean thermal energy conversion plantship does not unreasonably impinge on so as to degrade the thermal gradient used by the operation of any other ocean thermal energy conversion plantship or facility except in case of force majeure or with the consent of owner of the other such plantship or facility, and to ensure that the thermal plum of such an ocean thermal energy conversion plantship does not impinge on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation unless the Secretary of State has approved such impingement after consultation with such nation.

⟦SEC. 110. MONITORING OF LICENSEES' ACTIVITIES.

⟦Each license shall require the licensee—

⟦(1) to allow the Administrator to place appropriate Federal officers or employees in or aboard the ocean thermal energy conversion facility or plantship to which the license applies, at such times and to such extent as the Administrator deems reasonable and necessary to assess compliance with any condition or regulation applicable to the license, and to report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply;

⟦(2) to cooperate with such officers and employees in the performance of monitoring functions; and

⟦(3) to monitor the environmental effects, if any, of the operation of the ocean thermal energy conversion facility or plantship in accordance with regulations issued by the Administrator, and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate mitigation methods and possibilities.

⟦SEC. 111. SUSPENSION, REVOCATION, OR TERMINATION OF LICENSE.

⟦(a) Whenever a licensee fails to comply with any applicable provision of this Act or any applicable rule, regulation, restriction, or condition issued or imposed by the Administrator under the authority of this Act, the Attorney General, at the request of the Administrator, shall file an action in the appropriate United States district court to—

⟦(1) suspend the license; or

⟦(2) if such failure is knowing and continues for a period of 30 days after the Administrator mails notification of such failure by registered letter to the licensee at his record post office address, revoke such license.

No proceeding under this section is necessary if the license, by its terms, provides for automatic suspension or termination upon the occurrence of a fixed or agreed upon condition, event, or time.

⟦(b) If the Administrator determines that immediate suspension of the construction or operation of an ocean thermal energy conversion facility or plantship or any component thereof is necessary to protect public health and safety or to eliminate imminent and substantial danger to the environment the Administrator may order the licensee to cease or alter such construction or operation pending the completion of a judicial proceeding pursuant to subsection (a) of this section.

⟦SEC. 112. RECORDKEEPING AND PUBLIC ACCESS TO INFORMATION.

⟦(a) Each licensee shall establish and maintain such records, make such reports, and provide such information as the Administrator, after consultation with other interested Federal departments and agencies, shall by regulation prescribe to carry out the provisions of this Act. Each licensee shall submit such reports and shall make available such records and information as the Administrator may request.

⟦(b) Any information reported to or collected by the Administrator under this Act which is exempt from disclosure pursuant to section 552(b)(4) of title 5, United States Code (relating to trade secrets and commercial or financial information which is privileged or confidential); shall not—

⟦(1) be publicly disclosed by the Administrator or by any other officer or employee of the United States, unless the Administrator has—

⟦(A) determined that the disclosure is necessary to protect the public health or safety or the environment against an unreasonable risk of injury, and

⟦(B) notified the person who submitted the information 10 days before the disclosure is to be made, unless the delay resulting from such notice would be detrimental to the public health or safety or the environment, or

⟦(2) be otherwise disclosed except—

⟦(A)(i) to other Federal and adjacent coastal State government departments and agencies for official use,

⟦(ii) to any committee of the congress of appropriate jurisdiction, or

⟦(iii) pursuant to court order, and

⟦(B) when the Administrator has taken appropriate steps to inform the recipient of the confidential nature of the information.

[SEC. 113. RELINQUISHMENT OR SURRENDER OF LICENSE.

[(a) Any licensee may at any time, without penalty, surrender to the Administrator a license issued to him, or relinquish to the Administrator, in whole or in part, any right to conduct construction or operation of an ocean thermal energy conversion facility or plantship, including part or all of any right of way which may have been granted in conjunction with such license: *Provided,* That such surrender or relinquishment shall not relieve the licensee of any obligation or liability established by this or any other Act, or of any obligation or liability for actions taken by him prior to such surrender or relinquishment, or during disposal or removal of any components required to be disposed of or removed pursuant to this Act.

[(b) If part or all of a right of way which is relinquished, or for which the license is surrendered, to the Administrator pursuant to subsection (a) of this section contains an electric transmission cable or pipeline which is used in conjunction with another license for an ocean thermal energy conversion facility, the Administrator shall allow the other licenses an opportunity to add such right of way to his license before informing the Secretary of the Interior that the right of way has been vacated.

[SEC. 114. CIVIL ACTIONS.

[(a) Except as provided in subsection (b) of this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action for equitable relief on his own behalf in the United States District Court for the District of Columbia whenever such action constitutes a case or controversy—

[(1) against any person who is alleged to be in violation of any provision of this Act or any regulation or condition of a license issued pursuant to this Act; or

[(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary.

In suits brought under this Act, the district courts of the United States shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any provision of this Act or any regulation or term or condition of a license issued pursuant to this Act, or to order the Administrator to perform such act or duty, as the case may be.

[(b) No civil action may be commenced—

[(1) under subsection (a)(1) of this section—

[(A) prior to 60 days after the plaintiff has given notice of the violation to the Administrator and to any alleged violator; or

[(B) if the Administrator or the Attorney General has commenced and is diligently prosecuting a civil or criminal action with respect to such matters in a court of the United States, but in any such action any person may intervene as a matter of right; or

[(2) under subsection (a)(2) of this section prior to 60 days after the plaintiff has given notice of such action to the Administrator.

Notice under this subsection shall be given in such a manner as the Administrator shall prescribe by regulation.

⟦(c) In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

⟦(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such an award is appropriate.

⟦(e) Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek enforcement or to seek any other relief.

⟦SEC. 115. JUDICIAL REVIEW.

⟦Any person suffering legal wrong, or who is adversely affected or aggrieved by the Administrator's decision to issue, transfer, modify, renew, suspend, or terminate a license may, not later than 60 days after such decision is made, seek judicial review of such decision in the United States Court of Appeals for the District of Columbia. A person shall be deemed to be aggrieved by the Administrator's decision within the meaning of this Act if he—

⟦(1) has participated in the administrative proceedings before the Administrator (or if he did not so participate, he can show that his failure to do so was caused by the Administrator's failure to provide the required notice); and

⟦(2) is adversely affected by the Administrator's action.

⟦SEC. 116. TEST PLATFORMS AND COMMERCIAL DEMONSTRATION OCEAN THERMAL ENERGY CONVERSION FACILITY OR PLANTSHIP.

⟦(a) The provisions of this title shall not apply to any test platform which will not operate as an ocean thermal energy conversion facility or plantship after conclusion of the testing period.

⟦(b) The provisions of this title shall not apply to ownership, construction, or operation of any ocean thermal energy conversion facility or plantship which the Secretary of Energy has designated in writing as a demonstration project for the development of alternative energy sources for the United States which is conducted by, participated in, or approved by the Department of Energy. The Secretary of Energy, after consultation with the Administrator, shall require such demonstration projects to abide by as many of the substantive requirements of this title as he deems to be practicable without damaging the nature of or unduly delaying such projects.

⟦SEC. 117. PERIODIC REVIEW AND REVISION OF REGULATIONS.

⟦The Administrator and the Secretary of the department in which the Coast Guard is operating shall periodically, at intervals of not more than every 3 years, and in consultation with the Secretary of Energy, review any regulations promulgated pursuant to the provisions of this title to determine the status and impact of such regulations on the continued development, evolution, and commercialization of ocean thermal energy conversion technology. The results of each such review shall be included in the next annual report required by section 405. The Administrator and such Secretary are authorized and directed to promulgate any revisions to the then effective regulations as are deemed necessary and appropriate based on such review, to ensure that any regulations promulgated pursuant to the provisions of this title do not impede such development, evolution, and commercialization of such technology. Additionally, the Secretary of Energy is authorized to propose, based on such review, such revisions for the same purpose. The Administrator or such Secretary, as appropriate, shall have exclusive jurisdiction with respect to any such proposal by the Secretary of Energy and, pursuant to applicable procedures, shall consider and take final action on any such proposal in an expeditious manner. Such consideration shall include at least one informal hearing pursuant to the procedures in section 553 of title 5, United States Code.

⟦TITLE II—MARITIME FINANCING FOR OCEAN THERMAL ENERGY CONVERSION

⟦SEC. 201. DETERMINATIONS UNDER THE MERCHANT MARINE ACT, 1936.

⟦(a)(1) For the purposes of section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177), any ocean thermal energy conversion facility or plantship licensed pursuant to this Act, and any vessel providing shipping service to or from such an ocean thermal energy conversion facility or plantship, shall be deemed to be a vessel operated in the foreign commerce of the United States.

⟦(2) The provisions of paragraph (1) of this subsection shall apply for taxable years beginning after December 31, 1981.

⟦(b) For the purposes of Merchant Marine Act, 1936 (46 U.S.C. 1177 et seq.) any vessel documented under the laws of the United States and used in providing shipping service to or from any ocean thermal energy conversion facility or plantship licensed pursuant to the provisions of this Act shall be deemed to be used in, and used in an essential service in, the foreign commerce or foreign trade of the United States, as defined in section 905(a) of the Merchant Marine Act, 1936 (46 U.S.C. 1244(a)).

⟦SEC. 202. AMENDMENTS TO TITLE XI OF THE MERCHANT MARINE ACT, 1936.

⟦(a) Section 1101 of the Merchant Marine Act, 1936 (46 U.S.C. 1271), is amended—

⟦(1) in subsection (b) by striking "and" immediately before "dredges" and inserting in lieu thereof a comma, and by inserting immediately after "dredges" the following: "and ocean thermal energy conversion facilities or plantships",

⟦(2) in subsection (g) by striking "and" after the semicolon,

⟦(3) in subsection (h) by striking "equipping" and inserting in lieu thereof "equipping and", and

⟦(4) by adding at the end thereof a new subsection (i) to read as follows:

⟦"(i) The term 'ocean thermal energy conversion facility or plantship' means any at-sea facility or vessel, whether mobile, floating unmoored, moored, or standing on the seabed, which uses temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility or vessel to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, freshwater, or product to shore, and all other associated equipment and appurtenances of such facility or vessel, to the extent they are located seaward of the highwater mark.".

⟦(b) Section 1104(a)(1) of the Merchant Marine Act, 1936 (46 U.S.C. 1274(a)(1)), is amended by striking "or (E)" and inserting in lieu thereof "(E) as an ocean thermal energy conversion facility or plantship; or (F)".

⟦(c) Section 1104(b)(2) of the Merchant Marine Act, 1936 (46 U.S.C. 1274(b)(2)), is amended by striking "vessel;" and inserting in lieu thereof "vessel: *Provided further*, That in the case of an ocean thermal energy conversion facility or plantship which is constructed without the aid of construction-differential subsidy, such obligations may be in an aggregate principal amount which does not exceed 87½ percent of the actual cost or depreciated actual cost of the facility or plantship;".

⟦SEC. 203. OTEC DEMONSTRATION FUND.

⟦(a) Title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271–1279b) is further amended by adding at the end thereof a new section 1110 to read as follows:

⟦"SEC. 1110. (a) Pursuant to the authority granted under section 1103(a) of this title, the Secretary of Commerce, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a commercial demonstration ocean thermal energy conversion facility or plantship owned by citizens of the United States. Guarantees or commitments to guarantee under this subsection shall be subject to all the provisos, requirements, regulations, and procedures which apply to guarantees or commitments to guarantee made pursuant to section 1104(a)(1) of this title, except that—

⟦"(1) no guarantees or commitments to guarantee may be made by the Secretary of Commerce under this subsection before October 1, 1981;

⟦"(2) the provisions of subsection (d) of section 1104 of this title shall apply to guarantees or commitments to guarantee for that portion of a commercial demonstration ocean thermal energy conversion facility or plantship not to be supported with appropriated Federal funds;

⟦"(3) guarantees or commitments to guarantee made pursuant to this section may be in an aggregate principal amount which does not exceed 87½ percent of the actual cost or depreciated actual cost of the commercial demonstration ocean thermal energy conversion facility or plantship: *Provided*, That, if the commercial demonstration ocean thermal energy conversion facility or plant ship is supported with appropriated Federal funds, such guarantees or commitments to guarantee may not exceed 87½ percent of the aggregate principal amount of that portion of the actual cost or depreciated actual cost for which the obligor has an obligation to secure financing in accordance with the terms of the agreement between the obligor and the Department of Energy or other Federal agency; and

[“(4) the provisions of this section may be used to guarantee obligations for a total of not more than 5 separate commercial demonstration ocean thermal energy conversion facilities and plantships or a demonstrated 400 megawatt capacity, whichever comes first.

[“(b) A guarantee or commitment to guarantee shall not be made under this section unless the Secretary of Energy, in consultation with the Secretary of Commerce, certifies to the Secretary of Commerce that, for the ocean thermal energy conversion facility or plantship for which the guarantee or commitment to guarantee is sought, there is sufficient guarantee of performance and payment to lower the risk to the Federal Government to a level which is reasonable. The Secretary of Energy must base his considerations on the following: (1) the successful demonstration of the technology to be used in such facility at a scale sufficient to establish the likelihood of technical and economic viability in the proposed market; and (2) the need of the United States to develop new and renewable sources of energy and the benefits to be realized from the construction and successful operation of such facility or plantship.

[“(c) A special subaccount in the Federal Ship Financing Fund, to be known as the OTEC Demonstration Fund, shall be established on October 1, 1981. The OTEC Demonstration Fund shall be used for obligation guarantees authorized under this section which do not qualify under other sections of this title. Except as specified otherwise in this section, the operation of the OTEC Demonstration Fund shall be identical with that of the parent Federal Ship Financing Fund: except that, notwithstanding the provisions of section 1104(g), (1) all moneys received by the Secretary pursuant to sections 1101 through 1107 of this title with respect to guarantees or commitments to guarantee made pursuant to this section shall be deposited only in the OTEC Demonstration Fund, and (2) whenever there shall be outstanding any notes or other obligations issued by the Secretary of Commerce pursuant to section 1105(d) of this title with respect to the OTEC Demonstration Fund, all moneys received by the Secretary of Commerce pursuant to sections 1101 through 1107 of this title with respect to ocean thermal energy conversional facilities or plantships shall be deposited in the OTEC Demonstration Fund. Assets in the OTEC Demonstration Fund may at any time be transferred to the parent fund whenever and to the extent that the balance thereof exceeds the total guarantees or commitments to guarantee made pursuant to this section then outstanding, plus any notes or other obligations issued by the Secretary of Commerce pursuant to section 1105(d) of this title with respect to the OTEC Demonstration Fund. The Federal Ship Financing Fund shall not be liable for any guarantees or commitments to guarantee issued pursuant to this section. The aggregate unpaid principal amount of the obligations guaranteed with the backing of the OTEC Demonstration Fund and outstanding at any one time shall not exceed $2,000,000,000.

[“(d) The provisions of section 1105(d) of this title shall apply specifically to the OTEC Demonstration Fund as well as to the Fund: *Provided however,* That any notes or obligations issued by the Secretary of Commerce pursuant to section 1105(d) of this title with respect to the OTEC Demonstration Fund shall be payable solely from proceeds realized by the OTEC Demonstration Fund.

[“(e) The interest on any obligation guaranteed under this section shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1954.”

[(b)(1) Section 1103(f) of the Merchant Marine Act, 1936 (46 U.S.C. 1273(f)) is amended by striking out “$10,000,000,000.” and inserting in lieu thereof “$12,000,000,000, of which $2,000,000,000 shall be limited to obligations pertaining to commercial demonstration ocean thermal energy conversion facilities or plantships guaranteed pursuant to section 1110 of this title.”.

[(2) The amendment made by paragraph (1) of this subsection shall take effect October 1, 1981.

[TITLE III—ENFORCEMENT

[SEC. 301. PROHIBITED ACTS.

[It is unlawful for any person who is a United States citizen or national, or a foreign national in or on board an ocean thermal energy conversion facility or plantship or on board any vessel documented or numbered under the laws of the United States, or who is subject to the jurisdiction of the United States by an international agreement to which the United States is a party—

[(1) to violate any provision of this Act, or any rule, regulation, or order issued pursuant to this Act, or any term or condition of any license issued to such person pursuant to this Act;

[(2) to refuse to permit any Federal officer or employee authorized to monitor or enforce the provisions of sections 110 and 303 of this Act to enter or board an ocean thermal energy conversion facility or plantship or any vessel documented or numbered under the laws of the United States, for purposes of conducting any search or inspection in connection with the monitoring or enforcement of this Act or any rule, regulation, order, term, or condition referred to in paragraph (1) of this section;

[(3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer or employee in the conduct of any search or inspection described in paragraph (2) of this section;

[(4) to resist a lawful arrest for any act prohibited by this section; or

[(5) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person subject to this section knowing that the other person has committed any act prohibited by this section.

[SEC. 302. REMEDIES AND PENALTIES.

[(a)(1) The Administrator or his delegate shall have the authority to issue and enforce orders during proceedings brought under this Act. Such authority shall include the authority to issue subpoenas, administer oaths, compel the attendance and testimony of witnesses and the production of books, papers, documents, and other evidence, to take depositions before any designated individual competent to administer oaths, and to examine witnesses.

⟦(2) Whenever on the basis of any information available to him the Administrator finds that any person subject to section 301 of this title is in violation of any provision of this Act or any rule, regulation, order, license, or term or condition thereof, or other requirements under this Act, he may issue an order requiring such person to comply with such provision or requirement, or bring a civil action in accordance with subsection (b) of this section.

⟦(3) Any compliance order issued under this subsection shall state with reasonable specificity the nature of the violation and a time for compliance, not to exceed 30 days, which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

⟦(b)(1) Upon a request by the Administrator, the Attorney General shall commence a civil action for appropriate relief, including a permanent or temporary injunction, to halt any violation for which the Administrator is authorized to issue a compliance order under subsection (a)(2) of this section.

⟦(2) Upon a request by the Administrator, the Attorney General shall bring an action in an appropriate district court of the United States for equitable relief to redress a violation, by any person subject to section 301 of this title, or any provision of this Act, any regulation issued pursuant to this Act, or any license condition.

⟦(c)(1) Any person who is found by the Administrator, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 301 of this title shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Administrator, or his designee, by written notice. In determining the amount of such penalty, the Administrator shall take into account the nature, circumstances, extent and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history or prior offenses, ability to pay, and such other matters as justice may require.

⟦(2) Any person against whom a civil penalty is assessed under paragraph (1) of this subsection may obtain a review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Administrator shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

⟦(3) If any person subject to section 301 fails to pay an assessment of a civil penalty against him after it has become final, or after the appropriate court has entered final judgment in favor of the Administrator, the Administrator shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

[(4) The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this subsection.

[(d)(1) Any person subject to section 301 of this title is guilty of an offense if he willfully commits any act prohibited by such section.

[(2) Any offense, other than an offense for which the punishment is prescribed by section 103 of this Act, is punishable by a fine of not more than $75,000 for each day during which the violation continues. Any offense described in paragraphs (2), (3), (4), and (5) of section 301 is punishable by the fine or imprisonment for not more than 6 months, or both. If in the commission of any offense, the person subject to section 301 uses a dangerous weapon, engages in conduct that causes bodily injury to any Federal officer or employee, or places any Federal officer or employee in fear of imminent bodily injury, the offense is punishable by a fine or not more than $100,000 or imprisonment for not more than 10 years, or both.

[(e) Any ocean thermal energy conversion facility or plantship licensed pursuant to this Act and any other vessel documented or numbered under the laws of the United States, except a public vessel engaged in noncommercial activities, used in any violation of this Act or of any rule, regulation, order, license, or term or condition thereof, or other requirements of this Act, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof, whenever it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation a consenting party or privy to such violation.

[SEC. 303. ENFORCEMENT.

[(a) Except where a specific section of this Act designates enforcement responsibility, the provisions of this Act shall be enforced by the Administrator. The Secretary of the department in which the Coast Guard is operating shall have exclusive responsibility for enforcement measures which affect the safety of life and property at sea, shall exercise such other enforcement responsibilities with respect to vessels subject to the provisions of this Act as are authorized under other provisions of law, and may upon the specific request of the Administrator, assist the Administrator in the enforcement of any provision of this Act. The Administrator and the Secretary of the department in which the Coast Guard is operating may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment, including aircraft and vessels, and facilities of any other Federal agency or department, and may authorize officers or employees of other departments or agencies to provide assistance as necessary in carrying out subsection (b) of this section. The Administrator and the Secretary of the department in which the Coast Guard is operating may issue regulations jointly or severally as may be necessary and appropriate to carry out their duties under this section.

[(b) To enforce the provisions of this Act in or on board any ocean thermal energy conversion facility or plantship or any vessel subject to the provisions of this Act, any officer who is authorized by the Administrator or the Secretary of the department in which the Coast Guard is operating may—

⟦(1) enter or board, and inspect, any ocean thermal energy conversion facility or plantship, or any vessel which is subject to the provisions of this Act;

⟦(2) search the vessel if the officer has reasonable cause to believe that the vessel has been used or employed in the violation of any provision of this Act;

⟦(3) arrest any person subject to section 301 of this title if the officer has reasonable cause to believe that the person has committed a criminal act prohibited by sections 301 and 302(d) of this title;

⟦(4) seize the vessel together with its gear, furniture, appurtenances, stores, and cargo, used or employed in or, with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this Act if such seizure is necessary to prevent evasion of the enforcement of this Act;

⟦(5) seize any evidence related to any violation of any provision of this Act;

⟦(6) execute any warrant or other process issued by any court of competent jurisdiction; and

⟦(7) exercise any other lawful authority.

⟦(c) Except as otherwise specified in section 115 of this Act, the district courts of the United States shall have exclusive original jurisdiction over any case or controversy arising under the provisions of this Act. Except as otherwise specified in this Act, venue shall lie in any district wherein, or nearest, to which, the cause of action arose, or wherein any defendant resides, may be found, or has his principal office. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii. Any such court may, at any time—

⟦(1) enter restraining orders or prohibitions;

⟦(2) issue warrants, process in rem, or other process;

⟦(3) prescribe and accept satisfactory bonds or other security; and

⟦(4) take such other actions as are in the interest of justice.

⟦(d) For the purposes of this section, the term "vessel" includes an ocean thermal energy conversion facility or plantship, and the term "provisions of this Act" or "provision of this Act" includes any rule, regulation, or order issued pursuant to this Act and any term or condition of any license issued pursuant to this Act.

⟦TITLE IV—MISCELLANEOUS PROVISIONS

⟦SEC. 401. EFFECT OF LAW OF THE SEA TREATY.

⟦If the United States ratifies a treaty, which includes provisions with respect to jurisdiction over ocean thermal energy conversion activities, resulting from any United Nations Conference on the Law of the Sea, the Administrator, after consultation with the Secretary of State, shall promulgate any amendment to the regulations promulgated under this Act which is necessary and appropriate to conform such regulations to the provisions of such treaty, in anticipation of the date when such treaty shall come into force and effect for, or otherwise be applicable to, the United States.

[SEC. 402. INTERNATIONAL NEGOTIATIONS.

[The Secretary of State, in cooperation with the Administrator and the Secretary of the department in which the Coast Guard is operating, shall seek effective international action and cooperation in support of the policy and purposes of this Act and may initiate and conduct negotiations for the purpose of entering into international agreements designed to guarantee noninterference of ocean thermal energy conversion facilities and plantships with the thermal gradients used by other such facilities and plantships, to assure protection of such facilities and plantships and of navigational safety in the vicinity thereof, and to resolve such other matters relating to ocean thermal energy conversion facilities and plantships as need to be resolved in international agreements.

[SEC. 403. RELATIONSHIP TO OTHER LAWS.

[(a)(1) The Constitution, laws, and treaties of the United States shall apply to an ocean thermal energy conversion facility or plantship licensed under this Act and all of which is located seaward of the highwater mark, and to activities connected, associated, or potentially interfering with the use or operation of any such facility or plantship, in the same manner as if such facility or plantship were an area of exclusive Federal jurisdiction located within a State. Nothing in this Act shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty.

[(2) Ocean thermal energy conversion facilities and plantships licensed under this Act do not possess the status of islands and have no territorial seas of their own.

[(b)(1) Except as may otherwise be provided by this Act, nothing in this Act shall in any way alter the responsibilities and authorities of a State or the United States within the territorial seas of the United States.

[(2) The law of the nearest adjacent coastal State to which an ocean thermal energy conversion facility located beyond the territorial sea and licensed under this Act is connected by electric transmission cable or pipeline, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to such facility, to the extent applicable and not inconsistent with any provision or regulation under this Act or other Federal laws and regulations now in effect or hereafter adopted, amended, or repealed: *Provided, however,* That the application of State taxation laws is not extended hereby outside the seaward boundary of any State. All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States outside the seaward boundary of any State.

[(c)(1) For the purposes of the customs laws administered by the Secretary of the Treasury, ocean thermal energy conversion facilities and plantships documented under the laws of the United States and licensed under this Act shall be deemed to be vessels.

⟦(2) Except insofar as they apply to vessels documented under the laws of the United States, the customs laws administered by the Secretary of the Treasury, including the provisions of the Tariff Act of 1930, as amended (19 U.S.C. 1202), and other laws codified in title 19, United States Code, shall not apply to any ocean thermal energy conversion facility or plantship documented under the laws of the United States and licensed under the provisions of this Act, but all foreign articles to be used in the construction of any such facility or plantship, including any component thereof, shall first be made subject to all applicable duties and taxes which would be imposed upon or by reason of their importation if they were imported for consumption in the United States. Duties and taxes shall be paid thereon in accordance with laws applicable to merchandise imported into the customs territory of the United States.

⟦SEC. 404. SUBMARINE ELECTRIC TRANSMISSION CABLE AND EQUIPMENT SAFETY.

⟦(a) The Secretary of Energy, in cooperation with other interested Federal agencies and departments, shall establish and enforce such standards and regulations as may be necessary to assure the safe construction and operation of submarine electric transmission cables and equipment subject to the jurisdiction of the United States. Such standards and regulations shall include, but not be limited to, requirements for the use of the safest and best available technology for submarine electric transmission cable shielding, and for the use of automatic switches to shut off electric current in the event of a break in such a cable.

⟦(b) The Secretary of Energy, in cooperation with other interested Federal agencies and departments, is authorized and directed to report to the Congress within 60 days after the date of enactment of this Act on appropriations and staffing needed to monitor submarine electric transmission cables and equipment subject to the jurisdiction of the United States so as to assure that they meet all applicable standards for construction, operation, and maintenance.

⟦SEC. 405. ANNUAL REPORT.

⟦Within 6 months after the end of each fiscal year after the date of enactment of this Act, the Administrator shall submit to the President of the Senate and the Speaker of the House of Representatives a report on the administration of this Act during such fiscal year. Such report shall include, with respect to the fiscal year covered by the report—

⟦(1) a description of progress in implementing this Act;

⟦(2) a list of all licenses issued, suspended, revoked, relinquished, surrendered, terminated, renewed, or transferred; denials of issuance of licenses, and required suspensions and modifications of activities under licenses;

⟦(3) a description of ocean thermal energy conversion activities undertaken pursuant to licenses;

⟦(4) the number and description of all civil and criminal proceedings instituted under title III of this Act, and the current status of such proceedings; and

⟦(5) such recommendations as the Administrator deems appropriate for amending this Act.

⟦SEC. 406. AUTHORIZATION OF APPROPRIATIONS.

⟦There are authorized to be appropriated to the Secretary of Commerce, for the use of the Administrator in carrying out the provisions of this Act, not to exceed $3,000,000 for the fiscal year ending September 30, 1981, not to exceed $3,500,000 for the fiscal year ending September 30, 1982, not to exceed $3,500,000 for the fiscal year ending September 30, 1983, not to exceed $480,000 for each of the fiscal years ending September 30, 1984 and September 30, 1985, and not to exceed $630,000 for each of the fiscal years ending September 30, 1986 and September 30, 1987.

⟦SEC. 407. SEVERABILITY.

⟦If any provision of this Act or any application thereof is held invalid, the validity of the remainder of the Act, or any other application, shall not be affected thereby.

⟦SEC. 408. Within 18 months after the date of enactment of this provision, the Administrator shall submit to the President of the Senate and the Speaker of the House of Representatives a report detailing what steps the United States Government is taking and plans to take to promote and enhance the export potential of ocean thermal energy conversion components, facilities, and plantships manufactured by United States industry. Such report shall include—

⟦(1) the relevant views of the National Oceanic and Atmospheric Administration, International Trade Administration, Maritime Administration, Department of Energy, Small Business Administration, United States International Development Cooperative Agency, the Office of the Special Trade Representative, and other relevant United States Government agencies;

⟦(2) the findings of studies conducted by the Administrator to fulfill the intent of this section;

⟦(3) a summary of activities, including consultations held with representatives of both the ocean thermal energy conversion and financial industries conducted by the Administrator to fulfill the intent of this section; and

⟦(4) such recommendations as the Administrator deems appropriate for amending the Ocean Thermal Energy Conversion Act of 1980 (Public Law 96–320) or other relevant Acts to better promote and enhance the export potential of ocean thermal energy conversion components, facilities and plantships manufactured by United States industry.⟧

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972

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⟦TITLE IV—REGIONAL MARINE RESEARCH PROGRAMS

⟦PURPOSES

⟦SEC. 401. The purpose of this title is to establish regional research programs, under effective Federal oversight, to—

⟦(1) set priorities for regional marine and coastal research in support of efforts to safeguard the water quality and ecosystem health of each region; and

⟦(2) carry out such research through grants and improved coordination.

⟦DEFINITIONS

⟦SEC. 402. As used in this title, the term—

⟦(1) "Board" means any Regional Marine Research board established pursuant to section 403(a);

⟦(2) "Federal agency" means any department, agency, or other instrumentality of the Federal Government, including any independent agency or establishment of the Federal Government and any government corporation;

⟦(3) "local government" means any city, town, borough, county, parish, district, or other public body which is a political subdivision of a State and which is created pursuant to State law;

⟦(4) "marine and coastal waters" means estuaries, waters of the estuarine zone, including wetlands, any other waters seaward of the historic height of tidal influence, the territorial seas, the contiguous zone, and the ocean;

⟦(5) "nonprofit organization" means any organization, association, or institution described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation pursuant to section 501(a) of such Code;

⟦(6) "region" means 1 of the 9 regions described in section 403(a); and

⟦(7) "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

⟦REGIONAL MARINE RESEARCH BOARDS

⟦SEC. 403. (a) ESTABLISHMENT.—A Regional Marine Research board shall be established for each of the following regions:

⟦(1) the Gulf of Maine region, comprised of the marine and coastal waters off the State of Maine, New Hampshire, and Massachusetts (north of Cape Cod);

⟦(2) the greater New York bight region, comprised of the marine and coastal waters off the States of Massachusetts (south of Cape Cod), Rhode Island, Connecticut, New York, and New Jersey, from Cape Cod to Cape May;

⟦(3) the mid-Atlantic region, comprised of the marine and coastal waters off the States of New Jersey, Delaware, Maryland, Virginia, and North Carolina, from Cape May to Cape Fear;

⟦(4) the South Atlantic region, comprised of the marine and coastal waters off the States of North Carolina, South Carolina, Georgia, and Florida, from Cape Fear to the Florida Keys, including the marine and coastal waters off Puerto Rico and the United States Virgin Islands;

⟦(5) the Gulf of Mexico region, comprised of the marine and coastal waters off the States of Florida, Alabama, Mississippi, Louisiana, and Texas, along the Gulf coast from the Florida Keys to the Mexican border;

⟦(6) the California region, comprised of the marine and coastal waters off the State of California, from Point Reyes to the Mexican border;

⟦(7) the North Pacific region, comprised of the marine and coastal waters off the States of California, Oregon, and Washington, from Point Reyes to the Canadian border;

⟦(8) the Alaska region, comprised of the marine and coastal waters off the State of Alaska; and

⟦(9) insular Pacific region, comprised of the marine and coastal waters off the State of Hawaii, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

The Great Lakes Research Office authorized under section 118(d) of the Federal Water Pollution Control Act (33 U.S.C. 1268(d)) shall be responsible for research in the Great Lakes region and shall be considered the Great Lakes counterpart to the research program established pursuant to this title.

⟦(b) MEMBERSHIP.—

⟦(1) COMPOSITION.—Each Board shall be comprised of 11 members of which—

⟦(A) 3 members shall be appointed by the Administrator of the National Oceanic and Atmospheric Administration, including 1 member who shall be a Sea Grant Program Director from a State within such region, who shall serve as chairman of the board;

⟦(B) 2 members shall be appointed by the Administrator of the Environmental Protection Agency; and

⟦(C) 6 members shall be appointed by Governors of States located within the region.

⟦(2) QUALIFICATIONS.—Each individual appointed as a member of a Board shall possess expertise, pertinent to the region concerned, in scientific research, coastal zone management, fishery management, water quality management, State and local government, or any other area which is directly relevant to the functions of the Board. A majority of the members of each Board shall be trained in a field of marine or aquatic science and shall be currently engaged in research or research administration.

⟦(3) TERMS.—Each appointed member of a Board shall serve for a term of 4 years.

⟦(4) VACANCIES.—In the event of a vacancy, a replacement member shall be appointed in the same manner and in accordance with the same requirements as the member being replaced and shall serve the remainder of the term of the replaced member.

⟦(5) REIMBURSEMENT OF EXPENSES.—Each appointed member of a Board may be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from the member's usual place of residence, in accordance with section 5703 of title 5, United States Code, when engaged in the actual performance of Board duties.

⟦(c) FUNCTIONS.—Each Board shall, in accordance with the provisions of this title—

⟦(1) develop and submit to the Administrators of the National Oceanic and Atmospheric Administration and the Environmental Protection Agency a marine research plan, including periodic amendments thereto, that meets the requirements of section 404;

⟦(2) provide a forum for coordinating research among research institutions and agencies;

⟦(3) provide for review and comment on research plans by affected users and interests, such as the commercial and recreational fishing industries, other marine industries, State and local government entities, and environmental organizations;

⟦(4) ensure that the highest quality of research projects will be conducted to carry out the comprehensive plan; and

⟦(5) prepare, for submission to Congress, a periodic report on the marine environmental research issues and activities within the region in accordance with section 406 of this title.

⟦(d) POWERS.—Each Board shall be authorized to—

⟦(1) cooperate with Federal agencies, with States and with local government entities, interstate and regional agencies, other public agencies and authorities, nonprofit institutions, laboratories, and organizations, or other appropriate persons, in the preparation and support of marine research in the region;

⟦(2) enter into contracts, cooperative agreements or grants to State and local governmental entities, other public agencies or institutions, and non-profit institutions and organizations for purposes of carrying out the provisions of this title;

⟦(3) collect and make available through publications and other appropriate means, the results of, and other information pertaining to, the research conducted in the region;

⟦(4) call conferences on regional marine research and assessment issues, giving opportunity for interested persons to be heard and present papers at such conferences;

⟦(5) develop and stimulate, in consultation with the Department of State, joint marine research projects with foreign nations;

⟦(6) utilize facilities and personnel of existing Federal agencies, including scientific laboratories and research facilities;

⟦(7) accept, and for all general purposes of this Act, utilize funds from other sources, including but not limited to State and local funds, university funds, and donations; and

⟦(8) acquire secret processes, inventions, patent applications, patents, licenses, and property rights, by purchase, license, lease, or donation.

⟦(e) ADMINISTRATION.—

⟦(1) PRACTICES AND PROCEDURES.—Each Board shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this title. Each Board should use existing research administrative capability to the extent practicable.

⟦(2) COMMITTEES AND SUBCOMMITTEES.—Each Board shall establish such committees and subcommittees as are appropriate in the performance of its functions.

⟦(3) STAFF AND SUPPORT.—Each Board is authorized to hire such staff as are necessary to carry out the functions of the Board.

⟦(f) TERMINATION.—Each Board shall cease to exist on October 1, 1999, unless extended by Congress.

⟦REGIONAL RESEARCH PLANS

⟦SEC. 404. (a) DEVELOPMENT AND AMENDMENT OF REGIONAL PLANS.—

⟦(1) IN GENERAL.—Each Board shall develop a comprehensive 4-year marine research plan for the region for which the Board is responsible, and shall amend the plan at such times as the Board considers necessary to reflect changing conditions, but no less frequently than once every 4 years.

⟦(2) REVIEW AND CONSIDERATION OF NATIONAL PLAN.—In the development and amendment of its research plan, the Board shall consider findings and recommendations of the national plan developed pursuant to the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701 et seq.).

⟦(b) CONTENTS OF PLAN.—Such marine research plan shall include—

⟦(1) an overview of the environmental quality conditions in the coastal and marine waters of the region and expected trends in these conditions;

⟦(2) a comprehensive inventory and description of all marine research related to water quality and ecosystem health expected to be conducted in the region during the 4-year term of the research plan;

⟦(3) a statement and explanation of the marine research needs and priorities applicable to the marine and coastal waters of the region over the upcoming 10-year period with emphasis on the upcoming 3-to-5 year period;

⟦(4) an assessment of how the plan will incorporate existing marine, coastal, and estuarine research and management in the region, including activities pursuant to section 320 of the Federal Water Pollution Control Act (33 U.S.C. 1330) and section 315 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461); and

⟦(5) a general description of marine research and monitoring objectives and timetables for achievement through the funding of projects under this title during the 4-year period covered by the plan so as to meet the priorities specified in the plan in accordance with paragraph (3).

⟦(c) PLAN REVIEW AND APPROVAL.—

⟦(1) IN GENERAL.—When a Board has developed a marine research plan, including amendments thereto, the Board shall submit the plan to the Administrator of the National Oceanic and Atmospheric Administration and the Administration of the Environmental Protection Agency, who shall jointly determine whether the plan meets the requirements of subsection (b).

⟦(2) TIME FOR APPROVAL OR DISAPPROVAL.—The Administrator of the National Oceanic and Atmospheric Administration and the Administrator of the Environmental Protection Agency, shall jointly approve or disapprove such research plan within 120 days after receiving the plan.

⟦(3) ACTION AFTER DISAPPROVAL.—In the case of disapproval of such research plan, the Administrator of the National Oceanic and Atmospheric Administration and the Administrator of the Environmental Protection Agency shall jointly notify the appropriate Board in writing, stating in detail the revisions necessary to obtain approval of the plan. Such Administrators shall approve or disapprove the revised plan within 90 days after receiving the revised plan from the Board.

⟦RESEARCH GRANT PROGRAM

⟦SEC. 405. (a) PROGRAM ADMINISTRATION.—The Administrator of the National Oceanic and Atmospheric Administration shall administer a grant program to support the administrative functions of each Board.

⟦(b) RESEARCH GRANTS.—(1) Each Board may annually submit a grant application to the Administrator of the National Oceanic and Atmospheric Administration to fund projects aimed at achieving the research priorities set forth in each research plan, including amendments thereto, developed and approved pursuant to section 404.

⟦(2) Projects eligible for funding under this section shall include research, investigations, studies, surveys, or demonstrations with respect to—

⟦(A) baseline assessment of marine environmental quality, including chemical, physical, and biological indicators of environmental quality;

⟦(B) effects or potential effects of contaminants, including nutrients, toxic chemicals and heavy metals, on the environment, including marine and aquatic organisms;

⟦(C) effects of modification of habitats, including coastal wetlands, seagrass beds and reefs, on the environment, including marine organisms;

⟦(D) assessment of impacts of pollutant sources and pollutant discharges into the coastal environment;

⟦(E) transport, dispersion, transformation, and fate and effect of contaminants in the marine environment;

⟦(F) marine and estuarine habitat assessment and restoration;

⟦(G) methods and techniques for modeling environmental quality conditions and trends;

⟦(H) methods and techniques for sampling of water, sediment, marine and aquatic organisms, and demonstration of such methods and techniques;

⟦(I) the effects on human health and the environment of contaminants or combinations of contaminants at various levels, whether natural or anthropogenic, that are found in the marine environment;

⟦(J) environmental assessment of potential effects of major coastal and offshore development projects in the region;

⟦(K) assessment of the effects of climate change on marine resources in the region; and

⟦(L) analysis and interpretation of research data for the benefit of State and local environmental protection and resource management agencies in the region.

⟦(3) Grant applications submitted pursuant to this subsection shall include—

⟦(A) a description of the specific research projects to be conducted;

⟦(B) identification of the organization responsible for each project and the principal investigator directing the project;

⟦(C) a budget statement for each project;

⟦(D) a schedule of milestones and interim products for each research project;

⟦(E) a description of the relationship of the proposed project to the goals, objectives, and priorities of the research plan for the region and to other research projects; and

⟦(F) any other information which may be required by the Administrator.

⟦(c) REVIEW AND APPROVAL OF PROJECT PROPOSALS.—(1) The Administrator of the National Oceanic and Atmospheric Administration shall review the annual grant application and, with the concurrence of the Administrator of the Environmental Protection Agency, approve such grant application with such conditions as are determined to be appropriate based on peer reviews conducted pursuant to paragraph (2).

⟦(2) The Administrator of the National Oceanic and Atmospheric Administration shall develop a system of peer review of grant applications which shall ensure that only the highest quality research is approved for funding and that each project is reviewed by research scientists outside the region concerned.

⟦(d) REPORTING.—Any recipient of a grant under this section shall report to the appropriate Board, not later than 18 months after award of the grant, on the activities of such recipient conducted pursuant to this subsection. Such report shall include narrative summaries and technical data in such form as the Administrator of the National Oceanic and Atmospheric Administration may require.

⟦REPORT ON RESEARCH PROGRAM

⟦SEC. 406. (a) PREPARATION AND SUBMISSION OF REPORT.—Each Board receiving a grant under section 405 shall, not later than 2 years after the approval of its comprehensive plan under section 405 and at 2-year intervals thereafter, prepare and submit to the Administrator of the National Oceanic and Atmospheric Administration and the Administrator of the Environmental Protection Agency a report describing—

⟦(1) the findings and conclusions of research projects conducted in the region;

⟦(2) recommendations for improvements in the design or implementation of programs for the protection of the marine environment; and

⟦(3) available data and information concerning ecosystem health within the region.

⟦(b) TRANSMITTAL TO CONGRESS.—Upon receipt of a report prepared by a Board under subsection (a), the Administrator of the

National Oceanic and Atmospheric Administration and the Administrator of the Environmental Protection Agency shall transmit a copy of such report to the Committees on Commerce, Science, and Transportation and on Environment and Public Works of the Senate and to the Committee on Merchant Marine and Fisheries of the House of Representatives.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 407. (a) IN GENERAL.—For purposes of carrying out the provisions of this title, there are authorized to be appropriated $18,000,000 for each of the fiscal years 1992 through 1996.

[(b) ALLOCATION.—(1) Of funds appropriated in any fiscal year, not more than $500,000 shall be reserved for administration of this title by the National Oceanic and Atmospheric Administration and the Environmental Protection Agency.

[(2) Funds appropriated in a fiscal year which are available after allocation pursuant to paragraph (1), shall be used to support the administrative costs of Boards established pursuant to subsection 403(a), provided that such funding does not exceed $300,000 for each research Board in each fiscal year.

[(3) Seventy-five percent of funds appropriated in a fiscal year available after allocation pursuant to paragraphs (1) and (2), shall be allocated equally among Boards located in regions submitting research project grant applications pursuant to section 405(b).

[(4) Twenty-five percent of funds appropriated in a fiscal year available after allocation pursuant to paragraphs (1) and (2), shall be allocated among Boards located in regions submitting research project grant applications pursuant to section 405(b) which, in the judgment of the Administrator of the National Oceanic and Atmospheric Administration, in consultation with the Administrator of the Environmental Protection Agency, propose the most needed and highest quality research.

[TITLE V—NATIONAL COASTAL MONITORING ACT

[SEC. 501. PURPOSES.

[The purposes of this title are to—

[(1) establish a comprehensive national program for consistent monitoring of the Nation's coastal ecosystems;

[(2) establish long-term water quality assessment and monitoring programs for high priority coastal waters that will enhance the ability of Federal, State, and local authorities to develop and implement effective remedial programs for those waters;

[(3) establish a system for reviewing and evaluating the scientific, analytical, and technological means that are available for monitoring the environmental quality of coastal ecosystems;

[(4) establish methods for identifying uniform indicators of coastal ecosystem quality;

[(5) provide for periodic, comprehensive reports to Congress concerning the quality of the Nation's coastal ecosystems;

[(6) establish a coastal environment information program to distribute coastal monitoring information;

⟦(7) provide state programs authorized under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) with information necessary to design land use plans and coastal zone regulations that will contribute to the protection of coastal ecosystems; and

⟦(8) provide certain water pollution control programs authorized under the Federal Water Pollution Control Act 33 U.S.C. 1251 et seq.) with information necessary to design and implement effective coastal water pollution controls.

⟦SEC. 502. DEFINITIONS.

⟦For the purposes of this title, the term—

⟦(1) "Administrator" means the Administrator of the Environmental Protection Agency;

⟦(2) "coastal ecosystem" means a system of interacting biological, chemical, and physical components throughout the water column, water surface, and benthic environment of coastal waters;

⟦(3) "coastal water quality" means the physical, chemical and biological parameters that relate to the health and integrity of coastal ecosystems;

⟦(4) "coastal water quality monitoring" means a continuing program of measurement, analysis, and synthesis to identify and quantify coastal water quality conditions and trends to provide a technical basis for decisionmaking;

⟦(5) "coastal waters" means waters of the Great Lakes, including their connecting waters and those portions of rivers, streams, and other bodies of water having unimpaired connection with the open sea up to the head of tidal influence, including wetlands, intertidal areas, bays, harbors, and lagoons, including waters of the territorial sea of the United States and the contiguous zone; and

⟦(6) "Under Secretary" means Under Secretary of Commerce for Oceans and Atmosphere.

⟦SEC. 503. COMPREHENSIVE COASTAL WATER QUALITY MONITORING PROGRAM.

⟦(a) AUTHORITY; JOINT IMPLEMENTATION.—(1) The Administrator and the Under Secretary, in conjunction with other Federal, State, and local authorities, shall jointly develop and implement a program for the long-term collection, assimilation, and analysis of scientific data designed to measure the environmental quality of the Nation's coastal ecosystems pursuant to this section. Monitoring conducted pursuant to this section shall be coordinated with relevant monitoring programs conducted by the Administrator, Under Secretary, and other Federal, State, and local authorities.

⟦(2) Primary leadership for the monitoring program activities conducted by the Environmental Protection Agency pursuant to this section shall be located at the Environmental Research Laboratory in Narragansett, Rhode Island.

⟦(b) PROGRAM ELEMENTS.—The Comprehensive Coastal Water Quality Monitoring Program shall include, but not be limited to—

⟦(1) identification and analysis of the status of environmental quality in the Nation's coastal ecosystems, including but not limited to, assessment of—

⟦(A) ambient water quality, including contaminant levels in relation to criteria and standards issued pursuant to title III or the Federal Water Pollution Control Act 33 U.S.C. 1311 et seq.);

⟦(B) benthic environmental quality, including analysis of contaminant levels in sediments in relation to criteria and standards issued pursuant to title III of the Federal Water Pollution Control Act 33 U.S.C. 1311 et seq.); and

⟦(C) health and quality of living resources.

⟦(2) identification of sources of environmental degradation affecting the Nation's coastal ecosystems;

⟦(3) assessment of the impact of governmental programs and management strategies and measures designed to abate or prevent the environmental degradation of the Nation's coastal ecosystems;

⟦(4) assessment of the accumulation of floatables along coastal shorelines;

⟦(5) analysis of expected short-term and long-term trends in the environmental quality of the Nation's coastal ecosystems; and

⟦(6) the development and implementation of intensive coastal water quality monitoring programs in accordance with subsection (d).

⟦(c) MONITORING GUIDELINES AND PROTOCOLS.—

⟦(1) GUIDELINES.—Not later than 18 months after the date of the enactment of this title, the Administrator and the Under Secretary shall jointly issue coastal water quality monitoring guidelines to assist in the development and implementation of coastal water quality monitoring programs. The guidelines shall—

⟦(A) provide an appropriate degree of uniformity among the coastal water quality monitoring methods and data while preserving the flexibility of monitoring programs to address specific needs;

⟦(B) establish scientifically valid monitoring methods that will—

⟦(i) provide simplified methods to survey and assess the water quality and ecological health of coastal waters;

⟦(ii) identify and quantify through more intensive efforts the severity of existing or anticipated problems in selected coastal waters;

⟦(iii) identify and quantify sources of pollution that cause or contribute to those problems, including point and nonpoint sources; and

⟦(iv) evaluate over time the effectiveness of efforts to reduce or eliminate pollution from those sources;

⟦(C) provide for data compatibility to enable data to be efficiently stored and shared by various users; and

⟦(D) identify appropriate physical, chemical, and biological indicators of the health and quality of coastal ecosystems.

⟦(2) TECHNICAL PROTOCOLS.—Guidelines issued under paragraph (1) shall include protocols for—

⟦(A) designing statistically valid coastal water quality monitoring networks and monitoring surveys, including assessment of the accumulation of floatables.

⟦(B) sampling and analysis, including appropriate physical and chemical parameters, living resource parameters, and sediment analysis techniques; and

⟦(C) quality control, quality assessment, and data consistency and management.

⟦(3) PERIODIC REVIEW.—The Administrator and the Under Secretary shall periodically review the guidelines and protocols issued under this subsection to evaluate their effectiveness, the degree to which they continue to answer program objectives and provide an appropriate degree of uniformity while taking local conditions into account, and any need to modify or supplement them with new guidelines and protocols, as needed.

⟦(4) DISCHARGE PERMIT DATA.—The Administrator or a State permitting authority shall ensure that compliance monitoring conducted pursuant to section 402(a)(2) of the Federal Water Pollution Control Act 33 U.S.C. 1342(a)(2)) for permits for discharges to coastal waters is consistent with the guidelines issued under this subsection. Any modifications of discharge permits necessary to implement this subsection shall be deemed to be minor modifications of such permit. Nothing in this subsection requires dischargers to conduct monitoring other than compliance monitoring pursuant to permits under section 402(a)(2) of the Federal Water Pollution Control Act 33 U.S.C. 1342(a)(2)).

⟦(d) INTENSIVE COASTAL WATER QUALITY MONITORING PROGRAMS.—

⟦(1) IN GENERAL.—The Comprehensive Coastal Water Quality Monitoring Program established pursuant to this section shall include intensive coastal water quality monitoring programs developed under this subsection.

⟦(2) DESIGNATION OF INTENSIVE MONITORING AREAS.—Not later than 24 months after the date of enactment of this title and periodically thereafter, the Administrator and the Under Secretary shall, based on recommendations by the National Research Council, jointly designate coastal areas to be intensively monitored.

⟦(3) IDENTIFICATION OF SUITABLE COASTAL AREAS.—(A) The Administrator and the Under Secretary shall contract with the National Research Council to conduct a study to identify coastal areas suitable for the establishment of intensive coastal monitoring programs. In identifying these coastal areas, the National Research Council shall consider areas that—

⟦(i) are representatives of coastal ecosystems throughout the United States;

⟦(ii) will provide information to assess the status and trends of coastal water quality nation-wide; and

⟦(iii) would benefit from intensive water quality monitoring because of local management needs.

⟦(B) In making recommendations under this paragraph, the National Research Council shall consult with Regional Research Boards established pursuant to title IV of this Act.

⟦(C) The National Research Council shall, within 18 months of the date of enactment of this title, submit a report to the Administrator and the Under Secretary listing areas suitable for intensive monitoring.

⟦(D) The Administrator and the Under Secretary, in conjunction with other Federal, State, and local authorities, shall develop and implement multi-year programs of intensive monitoring for Massachusetts and Cape Cod Bays, the Gulf of Maine, the Chesapeake Bay, the Hudson-Raritan Estuary, and each area jointly designated by the Administrator and the Under Secretary pursuant to paragraph (2).

⟦(4) INTENSIVE COASTAL WATER QUALITY MONITORING PROGRAMS.—Each intensive coastal water quality monitoring program developed pursuant to this subsection shall—

⟦(A) identify water quality conditions and problems and provide information to assist in improving coastal water quality;

⟦(B) clearly state the goals and objectives of the monitoring program and their relationship to the water quality objectives for coastal waters covered by the program;

⟦(C) identify the water quality and biological parameters of the monitoring program and their relationship to these goals and objectives;

⟦(D) describe the types of monitoring networks, surveys and other activities to be used to achieve these goals and objectives, using where appropriate the guidelines issued under subsection (c);

⟦(E) survey existing Federal, State, and local coastal monitoring activities and private compliance monitoring activities in or on the coastal waters covered by the program, describe the relationship of the program to those other monitoring activities, and integrate them, as appropriate, into the intensive monitoring program;

⟦(F) describe the data management and quality control components of the program;

⟦(G) specify the implementation requirements for the program, including—

⟦(i) the lead Federal, State, or regional authority that will administer the program;

⟦(ii) the public and private parties that will implement the program;

⟦(iii) a detailed schedule for program implementation;

⟦(iv) all Federal and State responsibilities for implementing the program; and

⟦(v) the changes in Federal, State, and local monitoring programs necessary to implement the program;

⟦(H) estimate the costs to Federal and State governments, and other participants, of implementing the monitoring program; and

⟦(I) describe the methods to assess periodically the success of the monitoring program in meeting its goals and objectives, and the manner in which the program may be modified from time-to-time.

⟦(5) CRITERIA FOR MONITORING MASSACHUSETTS AND CAPE COD BAYS.—In addition to the criteria listed in paragraph (4), the intensive monitoring program for Massachusetts and Cape Cod Bays shall establish baseline data on environmental phenomena (such as quantity of bacteria and quality of indigenous species, and swimmability) and determine the ecological impacts resulting from major point source discharges.

⟦(6) MEMORANDUM OF UNDERSTANDING.—Prior to implementing any intensive coastal water quality monitoring program under this subsection, the Administrator and the Under Secretary shall enter into a Memorandum of Understanding to implement the intensive coastal water quality monitoring programs and may extend the memorandum of Understanding to include other appropriate Federal agencies. The Memorandum of Understanding shall identify the monitoring and reporting responsibilities of each agency and shall encourage the coordination of monitoring activities.

⟦(7) IMPLEMENTATION.—(A) The Administrator, the Under Secretary, and the Governor of each State having waters subject to an intensive coastal water quality monitoring program developed pursuant to this subsection shall ensure compliance with that program.

⟦(B) The Administrator and the Under Secretary are authorized to enter into cooperative agreements to provide financial assistance to non-Federal agencies and institutions to support implementation of intensive monitoring programs under this subsection. Federal financial assistance may only be provided on the condition that not less than fifty percent of the costs of the monitoring to be conducted by a non-Federal agency or institution is provided from non-Federal funds.

⟦(e) COMPREHENSIVE IMPLEMENTATION STRATEGY.—

⟦(1) IN GENERAL.—Within 1 year after the date of enactment of this title, the Administrator and the Under Secretary shall jointly submit to Congress a Comprehensive Implementation Strategy identifying the current and planned activities to implement the Comprehensive Coastal Monitoring Program pursuant to this section.

⟦(2) CONSULTATION.—The Administrator and the Under Secretary shall consult with the National Academy of Sciences, the Director of the United States Fish and Wildlife Service, the Director of the Minerals Management Service, the Commandant of the Coast Guard, the Secretary of the Navy, the Secretary of Agriculture, the heads of any other relevant Federal or regional agencies, and the Governors of coastal States in developing the Strategy.

⟦(3) PUBLIC COMMENT.—Not less than 3 months before submitting the Strategy to Congress, the Administrator and the Under Secretary shall jointly publish a draft version of the Strategy in the Federal Register and shall solicit public comments regarding the Strategy.

⟦(4) MEMORANDUM OF UNDERSTANDING.—Within 1 year after submission of the Strategy under paragraph (1), the Administrator and the Under Secretary shall enter into a Memorandum of Understanding with appropriate Federal agencies necessary to effect the coordination of Federal coastal monitoring programs. The Memorandum of Understanding shall identify the monitoring and reporting responsibilities of each agency and shall encourage the coordination of monitoring activities where possible.

⟦SEC. 504. REPORT TO CONGRESS.

⟦On September 30 of each other year beginning in 1993, the Administrator and the Under Secretary shall jointly submit to the Committee on Commerce, Science, and Transportation and the Committee on Environment and Public Works of the Senate and the Committee on Merchant Marine and Fisheries and the Committee on Public Works and Transportation of the House of Representatives a report describing the condition of the Nation's coastal ecosystems, including the following:

⟦(1) an assessment of the status and health of the Nation's coastal ecosystems;

⟦(2) an evaluation of environmental trends in coastal ecosystems;

⟦(3) identification of sources of environmental degradation affecting coastal ecosystems;

⟦(4) an assessment of the extent to which floatables degrade coastal ecosystems, including trends in the accumulation of floatables and the threat posed by floatables to aquatic life;

⟦(5) an assessment of the impact of government programs designed to abate the degradation of coastal ecosystems:

⟦(6) an evaluation of the adequacy of monitoring programs and identification of any additional program elements which may be needed; and

⟦(7) a summary of monitoring results in areas monitored under subsection 503(d).

⟦SEC. 505. AUTHORIZATION OF APPROPRIATIONS.

⟦(a) NOAA AUTHORIZATION.—For development and implementation of programs under this title, including financial assistance to non-Federal agencies and institutions to support implementation of intensive monitoring programs under section 503(d), there is authorized to be appropriated to the Under Secretary amounts not to exceed $5,000,000 for fiscal year 1993, $8,000,000 for fiscal year 1994, $10,000,000 for fiscal year 1995, and $12,000,000 for fiscal year 1996.

⟦(b) EPA AUTHORIZATION.—For development and implementation of programs under this title, including financial assistance to non-Federal agencies and institutions to support implementation of intensive monitoring programs under section 503(d), there is authorized to be appropriated to the Administrator amounts not to exceed $5,000,000 for fiscal year 1993, $8,000,000 for fiscal year 1994, and $10,000,000 for fiscal year 1995, and $12,000,000 for fiscal year 1996.⟧

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PUBLIC LAW 85–342

AN ACT To authorize the Secretary of the Interior to establish a program for the purpose of carrying on certain research and experimentation to develop methods for the commercial production of fish on flooded rice acreage in rotation with rice field crops, and for other purposes

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Interior is authorized and directed to establish an experiment station or stations for the purpose of carrying on a program of research and experimentation—

[(1) to determine species of fishes most suitable for culture on a commercial basis in shallow reservoirs and flooded rice lands;

[(2) to determine methods for production of fingerling fishes for stocking in commercial reservoirs;

[(3) to develop methods for the control of parasites and diseases of brood fishes and of fingerlings prior to stocking;

[(4) to develop economical methods for raising the more desirable species of fishes to a marketable size;

[(5) to determine, in cooperation with the Department of Agriculture, the effects of fish-rice rotations, including crops other than rice commonly grown on rice farms, upon both the fish and other crops; and

[(6) to develop suitable methods for harvesting the fish crop and preparing it for marketing, including a study of sport fishing as a means of such harvest.

[SEC. 2. For the purpose of carrying out the provisions of this Act, the Secretary of the Interior is authorized (1) to acquire by purchase, condemnation, or otherwise such suitable lands, to construct such buildings, to acquire such equipment and apparatus, and to employ such officers and employees as he deems necessary; (2) to cooperate with State and other institutions and agencies upon such terms and conditions as he determines to be appropriate; and (3) to make public the results of such research and experiments conducted pursuant to the first section of this Act.

[SEC. 3. The Department of Agriculture is authorized to cooperate in carrying out the provisions of this Act by furnishing such information and assistance as may be requested by the Secretary of the Interior.

[SEC. 4. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.]

ACT OF AUGUST 8, 1956

AN ACT To promote the fishing industry in the United States and its Territories by providing for the training of needed personnel for such industry

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) the Secretary of the Interior is authorized to make grants, out of funds appropriated for the purposes of this section, to public and nonprofit private universities and colleges in the several States and Territories of the United States for such purposes as may be necessary to promote the education and training of professionally trained personnel (including scientists, technicians, and teachers) needed in the field of commercial fishing. Any amount appropriated for the purposes of this section shall be apportioned on an equitable basis, as determined by the Secretary of the Interior, among the several States and Territories for the purpose of making grants within each such State and Territory. In making such apportionment the Secretary of the Interior shall take into account the extent of the fishing industry within each State and Territory as compared with the total fishing industry of the United States (including Territories), and such other factors as may be relevant in view of the purposes of this section.

⟦(b) There are authorized to be appropriated not in excess of $550,000 for the fiscal year beginning on July 1, 1955, and for each fiscal year thereafter for the purposes of this section.

⟦(c) The Secretary of the Interior may establish such regulations as may be necessary to carry out the provisions of this section.⟧

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PUBLIC LAW 86–359

AN ACT Authorizing and directing the Secretary of the Interior to undertake continuing research on the biology fluctations, status, and statistics of the migratory marine species of game fish of the United States and contiguous waters

⟦*Be it enacted by the Senate and House of Representatives of the Untied States of America in Congress assembled,* That the Secretary of the Interior is hereby directed to undertake a comprehensive continuing study of the migratory marine fish of interest to recreational fishermen of the United States, including species inhabiting the off-shore waters of the Untied States and species which migrate through or spend a part of their lives in the inshore waters of the United States. The study shall include, but not be limited to, research on migrations, identity of stocks, growth rates, mortality rates, variations in survival, environmental influences, both natural and artificial, including pollution, and effects of fishing on the species, for the purpose of developing wise conservation policies and constructive management activities.

⟦SEC. 2. For the purpose of carrying out the provisions of this Act, the Secretary of the Interior is authorized (1) to acquire lands, construct laboratory or other buildings, purchase boats, acquire such other equipment and apparatus, and to employ such officers and employees as he deems necessary; (2) to cooperate or contract with State and other institutions and agencies upon such terms and conditions as he determines to be appropriate; and (3) to make public the results of such research conducted pursuant to the first section of this Act.

⟦SEC 3. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act: *Provided*, That no more than $2,700,000 be appropriated for this purpose in any one fiscal year.⟧

ACT OF AUGUST 15, 1914

[CHAP. 253.—An Act To regulate the taking or catching of sponges in the waters of the Gulf of Mexico and the Straits of Florida outside of State jurisdiction; the landing, delivering, curing, selling, or possession of the same; providing means of enforcement of the same; and for other purposes

[*Be it enacted by the Senate and House of Representative of the United States of America in Congress assembled*, That on and after the approval of this Act it shall be unlawful for any citizen of the Untied States, or person owing duty of obedience to the laws of the United States or any boat or vessel of the United States, or person belonging to or on any such boat or vessel, to take or catch, by any means or method, in the waters of the Gulf of Mexico or the Straits of Florida outside of State territorial limits, any commercial sponges measuring when wet less than five inches in their maximum diameter, or for any person or vessel to land, deliver, cure, offer for sale, or have in possession at any port or place in the United States, or on any boat or vessel of the United States, any such commercial sponges.

[SEC. 2. That the presence of sponges of a diameter of less than five inches on any vessel or boat of the United States engaged in sponging in the waters of the Gulf of Mexico or the Straits of Florida outside of States territorial limits, or the possession of any sponges of less than the said diameter sold or delivered by such vessels, shall be prima facie evidence of a violation of this Act.

[SEC. 3. That every person, partnership or association guilty of a violation of the Act shall be liable to a find of not more than $500, and in addition such fine shall be a lien against the vessel or boat on which the offense is committed, and said vessel or boat shall be seized and proceeded against by process of libel in any court having jurisdiction of the offense.

[SEC. 4. That any violation of this Act shall be prosecuted in the district court of the United States of the district wherein the offender is found or into which he is first brought.

[SEC. 5. That it shall be the duty of the Secretary of Commerce to enforce the provisions of this Act, and he is authorized to employer such officers and employees of the Department of Commerce as he may designate, or such officers and employees of other departments as may be detailed for the purpose, to make arrests and seize vessels and sponges, and upon his request the Secretary of the Treasury may employ the vessels of the Revenue Cutter Service or the employees of the Customs Service to that end.

[SEC. 6. That the Act approved June twentieth, nineteen hundred and six , entitled "An Act of regulate the landing, delivery, cure, and sale of sponges" and all other laws in conflict herewith be, and the same hereby are, repealed.]

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TITLE VI—OPERATING-DIFFERENTIAL SUBSIDY

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SEC. 607.(a) * * *

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(k) Definitions.
For purposes of this section—
(1) The term "eligible vessel" means any vessel—
(A) * * *

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❲(9) The term "Secretary" means the Secretary of Commerce with respect to eligible or qualified vessels operated or to be operated in the fisheries of the United States, and the Secretary of Transportation with Respect to all other vessels.❳

(9) The term "Secretary" means the Secretary of Transportation.

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TITLE XI—FEDERAL SHIP MORTGAGE INSURANCE

SEC. 1101. As used in this title—
(a) * * *

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❲(n) The term "Secretary" means the Secretary of Commence with respect to fishing vessels and fishing facilities as provided by this title, and the Secretary of Transportation with respect to all other vessels and general shipyard facilities (as defined in section 1112(d)(3)).❳

(n) The term "Secretary" means the Secretary of Transportation.

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SECTION 401 OF THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978

TITLE IV—FISHERMEN'S CONTINGENCY FUND

DEFINITIONS

SEC. 401. As used in this title, the term—
(1) * * *

* * * * * * *

❲(8) "Secretary" means the Secretary of Commerce or the designee of such Secretary.❳

(8) "Secretary" means the Secretary of Transportation.

SECTION 10 OF THE FISHERMEN'S PROTECTIVE ACT OF 1967

SEC. 10. (a) For purposes of this section—

❲(1) The terms "fishery", "fishery conservation zone", "fishing", "fishing vessel," "Secretary", and "vessel of the United States" shall each have the same respective meaning as is given to such terms in section 3 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1802).❳

(1) The terms "fishery", "fishery conservation zone", "fishing", "fishing vessel", and "vessel of the United States" have the same meaning given to each of such terms in section 3 of the Magnu-

son Fishery Conservation and Management Act (16 U.S.C. 1802).

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(5) The term "Secretary" means the Secretary of Transportation.

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THE ACT OF 1890

CHAP. 1266.—An act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture

*   *   *   *   *   *   *

⟦SEC. 3. That the Chief of the Weather Bureau, under the direction of the Secretary of Agriculture, on and after July first, eighteen hundred, and ninety-one, shall have charge of the forecasting of weather, the issue of storm warnings, the display of weather and flood signals for the benefit of agriculture, commerce, and navigation, the gauging and reporting of rivers, the maintenance and operation of sea-coast telegraph lines and the collection and transmission of marine intelligence for the benefit of commerce and navigation, the reporting of temperature and rain-fall conditions for the cotton interests, the display of frost and cold-wave signals, the distribution of meteorological information in the interests of agriculture and commerce, and the taking of such meterological observations as may be necessary to establish and record the climatic conditions of the United States, or as are essential for the proper execution of the foregoing duties.⟧

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SEC. 9. That on and after July first, eighteen hundred and ninety-one, the appropriations for the support of the Signal Corps of the Army shall be made with those of other staff corps of the Army, and the appropriations for the support of the Weather Bureau shall be made with those of the other bureaus of the Department of Agriculture⟦, and it shall be the duty of the Secretary of Agriculture to prepare future estimates for the Weather Bureau which shall be hereafter specially developed and extended in the interests of agriculture⟧.

TITLE 44, UNITED STATES CODE

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CHAPTER 11—EXECUTIVE AND JUDICIARY PRINTING AND BINDING

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§ 1111. Annual reports: time for furnishing manuscript and proofs to Public Printer

The appropriations made for printing and binding may not be used for an annual report or the accompanying documents unless the manuscript and proof is furnished to the Public Printer in the following manner:

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This section does not apply to the annual reports of the Smithsonian Institution, the ⟦Commissioner of Patents,⟧ the Comptroller of the Currency, or the Secretary of the Treasury.

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§ 1114. Annual reports: number of copies for Congress one thousand copies of the annual reports of the departments to Congress shall be printed for the Senate, and two thousand for the House of Representatives

The usual number only of the reports of the Chief of Engineers of the Army, the ⟦Commissioner of Patents⟧ *Commissioner of Patents and Trademarks*, the Commissioner of Internal Revenue, the report of the Chief Signal Officer of the Department of the Army, and the Chief of Ordnance shall be printed.

* * * * * * *

§ 1123. Binding materials; bookbinding for libraries

Binding for the departments of the Government shall be done in plain sheep or cloth, except that record and account books may be bound in Russia leather, sheep fleshers, and skivers, when authorized by the head of a department. The libraries of the several departments, the Library of Congress, the libraries of the Surgeon General's Office, ⟦the Patent Office,⟧ and the Naval Observatory may have books for the exclusive use of these libraries bound in half Turkey, or material no more expensive.

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CHAPTER 13—PARTICULAR REPORTS AND DOCUMENTS

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⟦§ 1337. Patent Office: publications authorized to be printed

⟦The Commissioner of Patents, upon the requisition of the Secretary of Commerce may cause to be printed:

⟦1. Patents issued.—The patents for inventions and designs issued by the Patent Office, including grants, specifications, and drawings, together with copies of them, and of patents already issued, in the number needed for the business of the office.

⟦2. Trade-marks and labels.—The certificates of trade-marks and labels registered in the Patent Office, including descriptions and drawings, together with copies of them, and of trade-marks and labels previously registered, in the numbers needed for the business of the office.

⟦3. Official Gazette.—The Official Gazette of the United States Patent Office in numbers sufficient to supply all who subscribe for it at $5 a year; also for exchange for other scientific publications desirable for the use of the Patent Office; also to supply one copy to each Senator and Representative in Congress; with one hundred additional copies, together with weekly, monthly, and annual indexes. The "usual number" of the Official Gazette may not be printed.

⟦4. Report of Commissioner of Patents.—The annual report of the Commissioner of Patents, not exceeding five hundred in number, for distribution by him; the annual report of the Commissioner of Patents to Congress, without the list of patents, not exceeding one thousand five hundred in number, for distribution by him; and the annual report of the Commissioner of Patents to Congress, with the list of patents, five hundred copies for sale by him, if needed, and in addition the "usual number" only shall be printed.

⟦5. Rules of practice, laws, etc.—Pamphlet copies of the rules of practice, and of the patent laws, and pamphlet copies of the laws and rules relating to trade-marks and labels, and circulars relating to the business of the office, all in numbers as needed for the business of the office. The "usual number" may not be printed.

⟦6. Decisions of Commissioner and courts.—Annual volumes of the decisions of the Commissioner of Patents and of the United States courts in patent cases, not exceeding one thousand five hundred in number, of which the usual number shall be printed, and for this purpose a copy of each shall be transmitted to Congress promptly when prepared.

⟦7. Indexes.—Indexes to patents relating to electricity, and indexes to foreign patents, in the numbers needed for the business of the office. The "usual number" may not be printed.

⟦§ 1338. Patent Office: limitations and conditions concerning printing and lithographing

⟦Printing for the Patent Office making use of lithography or photo-lithography, together with the plates, shall be contracted for and performed under the direction of the Commissioner of Patents, under limitations and conditions prescribed by the Joint Committee on Printing, and other printing for the Patent Office shall be done by the Public Printer under limitations and conditions prescribed by the Joint Committee on Printing. The entire work may be done at the Government Printing Office when in the judgment of the Joint Committee on Printing it is to the interest of the Government.⟧

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SECTION 661 OF THE FOREIGN ASSISTANCE ACT OF 1961

⟦SEC. 661. TRADE AND DEVELOPMENT AGENCY.

⟦(a) PURPOSE.—The Trade and Development Agency shall be an agency of the United States under the foreign policy guidance of the Secretary of State. The purpose of the Trade and Development Agency is to promote United States private sector participation in development projects in developing and middle-income countries.

⟦(b) AUTHORITY TO PROVIDE ASSISTANCE.—

⟦(1) AUTHORITY.—The Director of the Trade and Development Agency is authorized to work with foreign countries, including those in which the United States development programs have been concluded or those not receiving assistance under part I, to carry out the purpose of this section by providing funds for feasibility studies, architectural and engineering design, and other activities related to development projects which provide opportunities for the use of United States exports.

⟦(2) USE OF FUNDS.—Funds under this section may be used to provide support for feasibility studies for the planning, development, and management of, and procurement for, bilateral and multilateral development projects, including training activities undertaken in connection with a project, for the purpose of promoting the use of United States goods and services in such projects. Funds under this section may also be used for architectural and engineering design, including—

⟦(A) concept design, which establishes the basic technical and operational criteria for a project, such as architectural drawings for a proposed facility, evaluation of site constraints, procurement requirements, and equipment specifications; and

⟦(B) detail design, which sets forth specific dimensions and criteria for structural, mechanical, electrical, and architectural operations, and identifies other resources required for project operations.

⟦(3) INFORMATION DISSEMINATION.—(A) The Trade and Development Agency shall disseminate information about its project activities to the private sector.

⟦(B) Other agencies of the United States Government shall cooperate with the Trade and Development Agency in order for the Agency to provide more effectively informational services to persons in the private sector concerning trade development and export promotion related to development projects.

⟦(4) NONAPPLICABILITY OF OTHER PROVISIONS.—Any funds used for purposes of this section may be used notwithstanding any other provision of law.

⟦(c) DIRECTOR AND PERSONNEL.—

⟦(1) DIRECTOR.—There shall be at the head of the Trade and Development Agency a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

⟦(2) OFFICERS AND EMPLOYEES.—(A) The Director may appoint such officers and employees of the Trade and Development Agency as the Director considers appropriate.

⟦(B) The officers and employees appointed under this paragraph shall have such functions as the Director may determine.

⟦(C) Of the officers and employees appointed under this paragraph, 2 may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be compensated without regard to the provisions of chapter 51 or subchapter III of chapter 53 of such title.

⟦(D) Under such regulations as the President may prescribe, any individual appointed under subparagraph (C) may be entitled, upon removal (except for cause) from the position to which the appointment was made, to reinstatement to the position occupied by that individual at the time of appointment or to a position of comparable grade and pay.

⟦(d) ANNUAL REPORT.—The President shall, not later than December 31 of each year, submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report on the activities of the Trade and Development Agency in the preceding fiscal year.

⟦(e) AUDITS.—

⟦(1) IN GENERAL.—The Trade and Development Agency shall be subject to the provisions of chapter 35 of title 31, United States Code, except as otherwise provided in this section.

⟦(2) INDEPENDENT AUDIT.—An independent certified public accountant shall perform a financial and compliance audit of the financial statements of the Trade and Development Agency each year, in accordance with generally accepted Government auditing standards for a financial and compliance audit, taking into consideration any standards recommended by the Comptroller General. The independent certified public accountant shall report the results of such audit to the Director of the Trade and Development Agency. The financial statements of the Trade and Development Agency shall be presented in accordance with generally accepted accounting principles. These financial statements and the report of the accountant shall be included in a report which contains, to the extent applicable, the information identified in section 3512 of title 31, United States Code, and which the Trade and Development Agency shall submit to the Congress not later than 6½ months after the end of the last fiscal year covered by the audit. The Comptroller General may review the audit conducted by the accountant and the report to the Congress in the manner and at such times as the Comptroller General considers necessary.

⟦(3) AUDIT BY COMPTROLLER GENERAL.—In lieu of the financial and compliance audit required by paragraph (2), the Comptroller General shall, if the Comptroller General considers it necessary or upon the request of the Congress, audit the financial statements of the Trade and Development Agency in the manner provided in paragraph (2).

⟦(4) AVAILABILITY OF INFORMATION.—All books, accounts, financial records, reports, files, workpapers, and property belonging to or in use by the Trade and Development Agency and the accountant who conducts the audit under paragraph (2), which are necessary for purposes of this subsection, shall be made available to the representatives of the General Accounting Office designated by the Comptroller General.

⟦(f) FUNDING.—

⟦(1) AUTHORIZATION.—(A) There are authorized to be appropriated for purposes of this section, in addition to funds otherwise available for such purposes, $77,000,000 for fiscal year 1995 and such sums as are necessary for fiscal year 1996.

⟦(B) Amounts appropriated pursuant to the authorization of appropriations under subparagraph (A) are authorized to remain available until expended.

⟦(2) FUNDING FOR TECHNICAL ASSISTANCE GRANTS BY MULTILATERAL DEVELOPMENT BANKS.—(A) The Trade and Development Agency should, in fiscal years 1993 and 1994, substantially increase the amount of funds it provides to multilateral development banks for technical assistance grants.

⟦(B) As used in subparagraph (A)—

⟦(i) the term "technical assistance grants" means funding by multilateral development banks of services from the United States in connection with projects and programs supported by such banks, including, but not limited to, engineering, design, and consulting services; and

⟦(ii) the term "multilateral development bank" has the meaning given that term in section 1701(c) of the International Financial Institutions Act.⟧

SECTION 242 OF THE TRADE EXPANSION ACT OF 1962

SEC. 242.* INTERAGENCY TRADE ORGANIZATION.

(a)(1) * * *

* * * * * * *

⟦(3) The interagency organization shall be composed of the following:

⟦(A) The Trade Representative, who shall be chairperson.

⟦(B) The Secretary of Commerce.

⟦(C) The Secretary of State.

⟦(D) The Secretary of the Treasury.

⟦(E) The Secretary of Agriculture

⟦(F) The Secretary of Labor.

The Trade Representative may invite representatives from other agencies, as appropriate, to attend particular meetings if subject matters of specific functional interest to such agencies are under consideration. It shall meet at such times and with respect to such matters as the President or the Chairman shall direct.⟧

(3)(A) The interagency organization established under subsection (a) shall be composed of—

(i) the United States Trade Representative, who shall be the chairperson,

(ii) the Secretary of Agriculture,

(iii) the Secretary of the Treasury,

(iv) the Secretary of Labor,

(v) the Secretary of State, and

(vi) the representatives of such other departments and agencies as the United States Trade Representative shall designate.

(B) The United States Trade Representative may invite representatives from other agencies, as appropriate, to attend particular meetings if subject matters of specific functional interest to such agencies are under consideration. It shall meet at such

times and with respect to such matters as the President or the chairperson shall direct.

* * * * * * *

SECTION 101 OF THE NATIONAL SECURITY ACT OF 1947

NATIONAL SECURITY COUNCIL

SEC. 101. (a) There is hereby established a council to be known as the National Security Council (thereinafter in this section referred to as the "Council").

The President of the United States shall preside over meetings of the Council: *Provided,* That in his absence he may designate a member of the Council to preside in his place.

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

The Council shall be composed of—

(1) the President;

(2) the Vice President;

(3) the Secretary of State;

(4) the Secretary of Defense;

(5) the United States Trade Representative;

⟦(5)⟧ *(6)* the Director for Mutual Security;

⟦(6)⟧ *(7)* the Chairman of the National Security Resources Board; and

⟦(7)⟧ *(8)* The Secretaries and Under Secretaries of other executive departments and the military departments, the Chairman of the Munitions Board, and the Chairman of the Research and Development Board, when appointed by the President by and with the advice and consent of the Senate, to serve at his pleasure.

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SECTION 3 OF THE BRETTON WOODS AGREEMENT ACT

APPOINTMENT OF GOVERNORS, EXECUTIVE DIRECTORS, AND ALTERNATES

SEC. 3. (a) * * *

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(e) The United States executive director of the Fund shall consult with the United States Trade Representative with respect to matters under consideration by the Fund which relate to trade.

TRADE ACT OF 1974

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TITLE I—NEGOTIATING AND OTHER AUTHORITY

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TITLE I—NEGOTIATING AND OTHER AUTHORITY

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⟦CHAPTER 4—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

⟦SEC. 141. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.

⟦(a) There is established within the Executive Office of the President the Office of the United States Trade Representative (hereinafter in this section referred to as the "Office").

⟦(b)(1) The Office shall be headed by the United States Trade Representative who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of the United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. The United States Trade Representative shall hold office at the pleasure of the President, shall be entitled to receive the same allowances as a chief of mission, and shall have the rank of Ambassador Extraordinary and Plenipotentiary.

⟦(2) There shall be in the Office three Deputy United States Trade Representatives who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, and nomination of a Deputy United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. Each Deputy United States Trade Representative shall hold office at the pleasure of the President and shall have the rank of Ambassador.

⟦(c)(1) The United States Trade Representative shall—

⟦(A) have primary responsibility for developing, and for coordinating the implementation of, United States international trade policy, including commodity matters, and, to the extent they are related to international trade policy, direct investment matters;

⟦(B) serve as the principal advisor to the President on international trade policy and shall advise the President on the impact of other policies of the United States Government on international trade;

⟦(C) have lead responsibility for the conduct of, and shall be the chief representative of the United States for, international trade negotiations, including all negotiations on any matter considered under the auspices of the World Trade Organization, commodity and direct investment negotiations, in which the United States participates;

⟦(D) issue and coordinate policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of international trade functions, including any matter considered under the auspices of the World Trade Organization, to the extent necessary to assure the coordination of international trade policy and consistent with any other law;

⟦(E) act as the principal spokesman of the President on international trade;

⟦(F) report directly to the President and the Congress regarding, and be responsible to the President and the Congress for the administration of, trade agreements programs;

⟦(G) advise the President and Congress with respect to nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements programs;

⟦(H) be responsible for making reports to Congress with respect to matters referred to in subparagraphs (C) and (F);

⟦(I) be chairman of the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962, and shall consult with and be advised by such organization in the performance of his functions; and

⟦(J) in addition to those functions that are delegated to the United States Trade Representative as of the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988, be responsible for such other functions as the President may direct.

⟦(2) It is the sense of Congress that the United States Trade Representative should—

⟦(A) be the senior representative on any body that the President may establish for the purpose of providing to the President advice on overall economic policies in which international trade matters predominate; and

⟦(B) be included as a participant in all economic summit and other international meetings at which international trade is a major topic.

⟦(3) The United States Trade Representative may—

⟦(A) delegate any of his functions, powers, and duties to such officers and employees of the Office as he may designate; and

⟦(B) authorize such successive redelegations of such functions, powers, and duties to such officers and employees of the Office as he may deem appropriate.

⟦(4) Each Deputy United States Trade Representative shall have as his principal function the conduct of trade negotiations under this Act and shall have such other functions as the United States Trade Representative may direct.

[(d)(1) In carrying out subsection (c) with respect to unfair trade practices, the United States Trade Representative shall—

[(A) coordinate the application of interagency resources to specific unfair trade practice cases;

[(B) identify, and refer to the appropriate Federal department or agency for consideration with respect to action, each act, policy, or practice referred to in the report required under section 181(b), or otherwise known to the United States Trade Representative on the basis of other available information, that may be an unfair trade practice that either—

[(i) is considered to be inconsistent with the provisions of any trade agreement and has a significant adverse impact on United States commerce, or

[(ii) has a significant adverse impact on domestic firms or industries that are either too small or financially weak to initiate proceedings under the trade laws;

[(C) identify practices having a significant adverse impact on United States commerce that the attainment of United States negotiating objectives would eliminate; and

[(D) identify, on a biennial basis, those United States Government policies and practices that, if engaged in by a foreign government, might constitute unfair trade practices under United States law.

[(2) For purposes of carrying out paragraph (1), the United States Trade Representative shall be assisted by an interagency unfair trade practices advisory committee composed of the Trade Representative, who shall chair the committee, and senior representatives of the following agencies, appointed by the respective heads of those agencies:

[(A) The Bureau of Economics and Business Affairs of the Department of State.

[(B) The United States and Foreign Commercial Services of the Department of Commerce.

[(C) The International Trade Administration (other than the United States and Foreign Commercial Service) of the Department of Commerce.

[(D) The Foreign Agricultural Service of the Department of Agriculture.

The United States Trade Representative may also request the advice of the United States International Trade Commission regarding the carrying out of paragraph (1).

[(3) For purposes of this subsection, the term "unfair trade practice" means any act, policy, or practice that—

[(A) may be a subsidy with respect to which countervailing duties may be imposed under subtitle A of title VII;

[(B) may result in the sale or likely sale of foreign merchandise with respect to which antidumping duties may be imposed under subtitle B of title VII;

[(C) may be either an unfair method of competition, or an unfair act in the importation of articles into the United States, that is unlawful under section 337; or

[(D) may be an act, policy, or practice of a kind with respect to which action may be taken under title III of the Trade Act of 1974.

⟦(e) The United States Trade Representative may, for the purpose of carrying out his functions under this section—

⟦(1) subject to the civil service and classification laws, select, appoint, employ, and fix the compensation of such officers and employees as are necessary and prescribe their authority and duties, except that not more than 20 individuals may be employed without regard to any provision of law regulating the employment or compensation at rates not to exceed the rate of pay for level IV of the Executive Schedule in section 5314 of title 5, United States Code;

⟦(2) employ experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate individuals so employed for each day (including traveltime) at rates not in excess of the maximum rate of pay for grade GS–18 as provided in section 5332 of title 5, United States Code, and while such experts and consultants are so serving away from their homes or regular place of business, to pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently;

⟦(3) promulgate such rules and regulations as may be necessary to carry out the functions, powers and duties vested in him;

⟦(4) utilize, with their consent, the services, personnel, and facilities of other Federal agencies;

⟦(5) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the work of the Office and on such terms as the United States Trade Representative may deem appropriate, with any agency or instrumentality of the United States, or with any public or private person, firm, association, corporation, or institution;

⟦(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31, United States Code;

⟦(7) adopt an official seal, which shall be judicially noticed; and

⟦(8) pay for expenses approved by him for official travel without regard to the Federal Travel Regulations or to the provisions of subchapter I of chapter 57 of title 5, United States Code (relating to rates of per diem allowances in lieu of subsistence expenses);

⟦(9) accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Office;

⟦(10) acquire, by purchase or exchange, not more than two passenger motor vehicles for use abroad, except that no vehicle may be required at a cost exceeding $9,500; and

⟦(11) provide, where authorized by law, copies of documents to persons at cost, except that any funds so received shall be credited to, and be available for use from, the account from which expenditures relating thereto were made.

⟦(f) The United States Trade Representative shall, to the extent he deems it necessary for the proper administration and execution of the trade agreements programs of the United States, draw upon the resources of, and consult with, Federal agencies in connection with the performance of his functions.

⟦(g)(1)(A) There are authorized to be appropriated to the Office for the purposes of carrying out its functions not to exceed the following:

⟦(i) $23,250,000 for fiscal year 1991.

⟦(ii) $21,077,000 for fiscal year 1992.

⟦(B) Of the amounts authorized to be appropriated under subparagraph (A) for any fiscal year—

⟦(i) not to exceed $98,000 may be used for entertainment and representation expenses of the Office;

⟦(ii) not to exceed $2,050,000 may be used to pay the United States share of the expenses of binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the United States-Canada Free-Trade Agreement; and

⟦(iii) not to exceed $1,000,000 shall remain available until expended.

⟦(2) For the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, there are authorized to be appropriated to the Office for the salaries of its officers and employees such additional sums as may be provided by law to reflect pay rate changes made in accordance with the Federal Pay Comparability Act of 1970.⟧

CHAPTER 4—REPRESENTATION IN TRADE NEGOTIATIONS

SEC. 141. FUNCTIONS OF THE UNITED STATES TRADE REPRESENTATIVE.

The United States Trade Representative of the United States Trade Administration established under section 201 of the Trade Reorganization Act of 1995 shall—

(1) be the chief representative of the United States for each trade negotiation under this chapter or chapter 1 of title III of this Act, or subtitle A of title I of the Omnibus Trade and Competitiveness Act of 1988, or any other provision of law enacted after the Department of Commerce Dismantling Act;

(2) report directly to the President and the Congress, and be responsible to the President and the Congress for the administration of trade agreements programs under this Act, the Omnibus Trade and Competitiveness Act of 1988, the Trade Expansion Act of 1962, section 350 of the Tariff Act of 1930, and any other provision of law enacted after the Department of Commerce Dismantling Act;

(3) advise the President and the Congress with respect to nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements programs; and

(4) be responsible for making reports to Congress with respect to the matters set forth in paragraphs (1) and (2).

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SECTION 202 OF THE FOREIGN SERVICE ACT OF 1980

SEC. 202. OTHER AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a)(1) * * *

* * * * * * *

【(3) The Secretary of Commerce may utilize the Foreign Service personnel system in accordance with this Act—

【(A) with respect to the personnel performing functions transferred to the Department of Commerce from the Department of State by Reorganization Plan Numbered 3 of 1979, and

【(B) with respect to other personnel of the Department of Commerce to the extent the President determines to be necessary in order to enable the Department of Commerce to carry out functions which require service abroad.】

(3) The United States Trade Representative of the United States Trade Administration may utilize the Foreign Service personnel system in accordance with this Act—

(A) with respect to the personnel performing functions—

(i) which were transferred to the Department of Commerce from the Department of State by Reorganization Plan No. 3 of 1979; and

(ii) which were subsequently transferred to the United States Trade Representative by section 432 of the Department of Commerce Dismantling Act; and

(B) with respect to other personnel of the United States Trade Administration to the extent the President determines to be necessary in order to enable the United States Trade Administration to carry out functions which require service abroad.

* * * * * * *

ACT OF JUNE 5, 1939

AN ACT To establish the position of Under Secretary in the Department of Commerce

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, 【That there is hereby established in the Department of Commerce the position of Under Secretary of Commerce with compensation at the rate of $10,000 per annum and with appointment thereto by the President, by and with the advice and consent of the senate.

SEC. 2. Such Under Secretary shall perform the duties of the Secretary of Commerce in the case of absence or sickness of the Secretary, or in the case of the death or resignation of the Secretary until a successor is appointed.】

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TITLE 35, UNITED STATES CODE

PART I—PATENT AND TRADEMARK OFFICE

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[CHAPTER 1—ESTABLISHMENT, OFFICERS, FUNCTIONS

CHAPTER 1—ESTABLISHMENT, OFFICERS AND EMPLOYEES, FUNCTIONS

* * * * * * *

[§ 1. Establishment

[The Patent and Trademark Office shall continue as an office in the Department of Commerce, where records, books, drawings, specifications, and other papers and things pertaining to patents and to trademark registrations shall be kept and preserved, except as otherwise provided by law.

[§ 2. Seal

[The Patent and Trademark Office shall have a seal with which letters patent, certificates of trade-mark registrations, and papers issued from the Office shall be authenticated.

[§ 3. Officers and employees

[(a) There shall be in the Patent and Trademark Office a Commissioner of Patents and Trademarks, a Deputy Commissioner, two Assistant Commissioners, and examiners-in-chief appointed under section 7 of this title. The Deputy Commissioner, or, in the event of a vacancy in that office, the Assistant Commissioner senior in date of appointment shall fill the office of Commissioner during a vacancy in that office until the Commissioner is appointed and takes office. The Commissioner of Patents and Trademarks, the Deputy Commissioner, and the Assistant Commissioners shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary of Commerce, upon the nomination of the Commissioner, in accordance with law shall appoint all other officers and employees.

[(b) The Secretary of Commerce may vest in himself the functions of the Patent and Trademark Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee.

[(c) The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each examiner-in-chief in the Patent and Trademark Office at not in excess of the maximum scheduled rate provided for positions in grade 17 of the General Schedule of the Classification Act of 1949, as amended.

[(d) The Commissioner of Patents and Trademarks shall be an Assistant Secretary of Commerce and shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce.

[(e) The members of the Trademark Trial and Appeal Board of the Patent and Trademark Office shall each be paid at a rate not to exceed the maximum rate of basic pay payable for GS-16 of the General Schedule under section 5332 of title 5.]

§ 1. Establishment

(a) ESTABLISHMENT.—The Patent and Trademark Office is established as a wholly owned Government corporation subject to chapter 91 of title 31, except as otherwise provided in this title.

(b) OFFICES.—The Patent and Trademark Office shall maintain an office in the District of Columbia, or the metropolitan area thereof, for the service of process and papers and shall be deemed, for purposes of venue in civil actions, to be a resident of the District of Columbia. The Patent and Trademark Office may establish offices in such other places as it considers necessary or appropriate in the conduct of its business.

(c) REFERENCE.—For purposes of this title, the Patent and Trademark Office shall also be referred to as the "Office".

§ 2. Powers and Duties

(a) IN GENERAL.—The Patent and Trademark Office shall be responsible for—

(1) the granting and issuing of patents and the registration of trademarks;

(2) conducting studies, programs, or exchanges of items or services regarding domestic and international patent and trademark law or the administration of the Office, including pro-

grams to recognize, identify, assess, and forecast the technology of patented inventions and their utility to industry;

(3) authorizing or conducting studies and programs cooperatively with foreign patent and trademark offices and international organizations, in connection with the granting and issuing of patents and the registration of trademarks; and

(4) disseminating to the public information with respect to patents and trademarks.

(b) SPECIFIC POWERS.—The Office—

(1) shall have perpetual succession;

(2) shall adopt and use a corporate seal, which shall be judicially noticed and with which letters patent, certificates of trademark registrations, and papers issued by the Office shall be authenticated;

(3) may sue and be sued in its corporate name and be represented by its own attorneys in all judicial and administrative proceedings;

(4) may indemnify the Commissioner of Patents and Trademarks, and other officers, attorneys, agents, and employees (including members of the Management Advisory Board established in section 5), of the Office for liabilities and expenses incurred within the scope of their employment;

(5) may adopt, amend, and repeal bylaws, rules, and regulations, governing the manner in which its business will be conducted and the powers granted to it by law will be exercised, without regard to chapter 35 of title 44;

(6) may acquire, construct, purchase, lease, hold, manage, operate, improve, alter, and renovate any real, personal, or mixed property, or any interest therein, as it considers necessary to carry out its functions, without regard to the provisions of the Federal Property and Administrative Services Act of 1949;

(7)(A) may make such purchases, contracts for the construction, maintenance, or management and operation of facilities, and contracts for supplies or services, after advertising, in such manner and at such times sufficiently in advance of opening bids, as the Office determines is adequate to ensure notice and an opportunity for competition, except that advertising shall not be required when the Office determines that the making of any such purchase or contract without advertising is necessary, or that advertising is not reasonably practicable;

(B) may enter into and perform such purchases and contracts for printing services, including the process of composition, platemaking, presswork, silk screen processes, binding, microform, and the products of such processes, as it considers necessary to carry out the functions of the Office, without regard to sections 501 through 517 and 1101 through 1123 of title 44; and

(C) may enter into and perform such other contracts, leases, cooperative agreements, or other transactions with international, foreign, and domestic public agencies and private organizations, and persons as is necessary in the conduct of its business and on such terms as it considers appropriate;

(8) may use, with their consent, services, equipment, personnel, and facilities of other departments, agencies, and instru-

mentalities of the Federal Government, on a reimbursable basis, and to cooperate with such other departments, agencies, and instrumentalities in the establishment and use of services, equipment, and facilities of the Office;

(9) may obtain from the Administrator of General Services such services as the Administrator is authorized to provide to other agencies of the United States, on the same basis as those services are provided to other agencies of the United States;

(10) may use, with the consent of the agency, government, or international organization concerned, the services, records, facilities, or personnel of any State or local government agency or instrumentality or foreign government or international organization to perform functions on its behalf;

(11) may determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to the provisions of this title and the Act of July 5, 1946 (commonly referred to as the "Trademark Act of 1946");

(12) may retain and use all of its revenues and receipts, including revenues from the sale, lease, or disposal of any real, personal, or mixed property, or any interest therein, of the Office, in carrying out the functions of the Office, including for research and development and capital investment, without apportionment under the provisions of subchapter II of chapter 15 of title 31;

(13) shall have the priority of the United States with respect to the payment of debts from bankrupt, insolvent, and decedents' estates;

(14) may accept monetary gifts or donations of services, or of real, personal, or mixed property, in order to carry out the functions of the Office;

(15) may execute, in accordance with its bylaws, rules, and regulations, all instruments necessary and appropriate in the exercise of any of its powers;

(16) may provide for liability insurance and insurance against any loss in connection with its property, other assets, or operations either by contract or by self-insurance; and

(17) shall pay any settlement or judgment entered against it from the funds of the Office and not from amounts available under section 1304 of title 31.

§3. Officers and employees

(a) COMMISSIONER.—

(1) IN GENERAL.—The management of the Patent and Trademark Office shall be vested in the Commissioner of Patents and Trademarks (hereafter in this title referred to as the "Commissioner"), who shall be a citizen of the United States and who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner shall be a person who, by reason of professional background and experience in patent and trademark law, is especially qualified to manage the Office.

(2) DUTIES.—

(A) IN GENERAL.—The Commissioner shall be responsible for the management and direction of the Office, including the issuance of patents and the registration of trademarks.

(B) ADVISING THE PRESIDENT.—The Commissioner shall advise the President of all activities of the Patent and Trademark Office undertaken in response to obligations of the United States under treaties and executive agreements, or which relate to cooperative programs with those authorities of foreign governments that are responsible for granting patents or registering trademarks. The Commissioner shall also recommend to the President changes in law or policy which may improve the ability of U.S. citizens to secure and enforce patent rights or trademark rights in the United States or in foreign countries.

(C) CONSULTING WITH THE MANAGEMENT ADVISORY BOARD.—The Commissioner shall consult with the Management Advisory Board established in section 5 on a regular basis on matters relating to the operation of the Patent and Trademark Office, and shall consult with the Board before submitting budgetary proposals to the Office of Management and Budget or changing or proposing to change patent or trademark user fees or patent or trademark regulations.

(3) TERM.—The Commissioner shall serve a term of six years, and may continue to serve until a successor is appointed and assumes office. The Commissioner may be reappointed to subsequent terms.

(4) OATH.—The Commissioner shall, before taking office, take an oath to discharge faithfully the duties of the Office.

(5) COMPENSATION.—The Commissioner shall receive compensation at the rate of pay in effect for level II of the Executive Schedule under section 5313 of title 5.

(6) REMOVAL.—The Commissioner may be removed from office by the President only for cause.

(7) DESIGNEE OF COMMISSIONER.—The Commissioner shall designate an officer of the Office who shall be vested with the authority to act in the capacity of the Commissioner in the event of the absence or incapacity of the Commissioner.

(b) OFFICERS AND EMPLOYEES OF THE OFFICE.—

(1) DEPUTY COMMISSIONERS.—The Commissioner shall appoint a Deputy Commissioner for Patents and a Deputy Commissioner for Trademarks for terms that shall expire on the date on which the Commissioner's term expires. The Deputy Commissioner for Patents shall be a person with demonstrated experience in patent law and the Deputy Commissioner for Trademarks shall be a person with demonstrated experience in trademark law. The Deputy Commissioner for Patents and the Deputy Commissioner for Trademarks shall be the principal policy advisors to the Commissioner on all aspects of the activities of the Office that affect the administration of patent and trademark operations, respectively.

(2) OTHER OFFICERS AND EMPLOYEES.—The Commissioner shall—

(A) appoint an Inspector General and such other officers, employees (including attorneys), and agents of the Office as the Commissioner considers necessary to carry out its functions;

(B) fix the compensation of such officers and employees, subject to the limits set forth in subsection (c); and

(C) define the authority and duties of such officers and employees and delegate to them such of the powers vested in the Office as the Commissioner may determine.

The Office shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the Office shall be taken into account for purposes of applying any such limitation, except to the extent otherwise specifically provided by statute with respect to the Office.

(c) LIMITS ON COMPENSATION.—Except as otherwise provided in this title or any other provision of law, the basic pay of an officer or employee of the Office for any calendar year may not exceed the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5. The Commissioner shall by regulation establish a limitation on the total compensation payable to officers or employees of the Office, consistent with the limitation under section 5307 of title 5.

(d) INAPPLICABILITY OF TITLE 5 GENERALLY.—Except as otherwise provided in this section, officers and employees of the Office shall not be subject to the provisions of title 5 relating to Federal employees.

(e) CARRYOVER OF PERSONNEL.—

(1) TO THE OFFICE.—Effective as of the effective date of the Patent and Trademark Office Corporation Act of 1995, all officers and employees of the Patent and Trademark Office on the day before such effective date shall become officers and employees of the Office, without a break in service.

(2) CONTINUATION IN OFFICE OF CERTAIN OFFICERS.—

(A) COMMISSIONER OF PATENTS AND TRADEMARKS.—The individual serving as the Commissioner of Patents and Trademarks on the day before the effective date of the Patent and Trademark Office Corporation Act of 1995 may serve as the Commissioner for a period of 1 year beginning on such effective date or, if earlier, until a Commissioner has been appointed under subsection (a).

(B) ASSISTANT COMMISSIONER FOR PATENTS.—The individual serving as the Assistant Commissioner for Patents on the day before the effective date of the Patent and Trademark Office Corporation Act of 1995 may serve as the Deputy Commissioner for Patents for a period of 1 year beginning on such effective date or, if earlier, until a Deputy Commissioner for Patents has been appointed under subsection (b).

(C) ASSISTANT COMMISSIONER FOR TRADEMARKS.—The individual serving as the Assistant Commissioner for Trademarks on the day before the effective date of the Patent and Trademark Office Corporation Act of 1995 may serve as the Deputy Commissioner for Trademarks for a period of 1 year beginning on such effective date or, if earlier,

until a Deputy Commissioner for Trademarks has been appointed under subsection (b).

(f) EMPLOYEE PROTECTION.—Not later than the effective date of the Patent and Trademark Office Corporation Act of 1995, the Commissioner shall, notwithstanding section 3531 of such Act, take appropriate measures to protect the employment interests of individuals who become employees of the Office pursuant to subsection (e)(1). Such measures shall include provisions to ensure that—

(1) the Office will adopt labor agreements in accordance with subsection (g);

(2) no such individual shall, during the 2-year period commencing on the effective date of the Patent and Trademark Office Corporation Act of 1995, be subject to separation or any reduction in compensation by reason of the establishment of the Office as a Government corporation pursuant to such Act;

(3) all sick leave, annual leave, and compensatory time accrued or accumulated under title 5 before the start of such 2-year period shall be obligations of the Office during such period; and

(4) there shall be made available to such employees not less than 1 life insurance program and not less than 3 health insurance programs, during such 2-year period, which shall be reasonably comparable, in terms of employee premium cost and coverage, to the Federal health and life insurance programs available to such employees on the day before the start of such period.

(g) LABOR AGREEMENTS.—

(1) ADOPTION OF EXISTING AGREEMENTS.—The Office shall adopt all labor agreements which are in effect, as of the day before the effective date of the Patent and Trademark Office Corporation Act of 1995, with respect to such Office (as then in effect). Each such agreement shall remain in effect for the 2-year period commencing on such date, unless the agreement provides for a shorter duration or the parties agree otherwise before such period ends.

(2) CONTINUED APPLICABILITY OF CHAPTER 71.—Chapter 71 of title 5 shall continue to apply with respect to the Office after the Patent and Trademark Office Corporation Act of 1995 takes effect.

(h) TERMINATION RIGHTS.—Any employee referred to in the first sentence of subsection (f) whose employment with the Office is terminated during the 2-year period commencing on the effective date of the Patent and Trademark Office Corporation Act of 1995 shall be entitled to rights and benefits, to be afforded by the Office, similar to those such employee would have had under Federal law if termination had occurred immediately before such date.

(i) RETIREMENT.—

(1) CONTINUED COVERAGE.—Any employee referred to in the first sentence of subsection (f) who, on the day before the effective date of the Patent and Trademark Office Corporation Act of 1995, is subject to subchapter III of chapter 83 of title 5 or chapter 84 of such title shall, so long as such employee remains employed by the Office without a break in service, remain subject to such subchapter or chapter, as the case may be. Any em-

ployment that satisfies the preceding sentence shall be considered employment by the Government of the United States for purposes of such subchapter or chapter. During any such employment, the Office shall be considered to be the employing agency of the employee and shall make all agency contributions required under such subchapter or chapter with respect to such employee.

(2) DEPOSIT REQUIREMENT.—Not later than 1 year after the effective date of the Patent and Trademark Office Corporation Act of 1995, the Office shall pay into the Treasury of the United States, to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the present value of the difference between (A) the future cost of benefits payable from the Fund and due the employees referred to in the first sentence of subsection (f) that are attributable to employment on or after the effective date of the Patent and Trademark Office Corporation Act of 1995, and (B) the contributions made by such employees and the Office under paragraph (1). In determining the amount due, the Office of Personnel Management shall take into consideration the actual interest such amount can be expected to earn when invested in the Treasury.

(j) COMPETITIVE STATUS.—For purposes of appointment to a position in the competitive service for which an officer or employee of the Office is qualified, such officer or employee—

(1) shall not forfeit any competitive status, acquired by such officer or employee before the effective date of the Patent and Trademark Office Corporation Act of 1995, by reason of becoming an officer or employee of the Office pursuant to subsection (e)(1); or

(2) if not covered by paragraph (1), shall acquire competitive status after completing at least 1 year of continuous service under a nontemporary appointment to a position within the Office (taking into account any such service performed with the former Patent and Trademark Office immediately before such effective date).

(k) SAVINGS PROVISIONS.—All orders, determinations, rules, and regulations regarding compensation and benefits and other terms and conditions of employment, in effect for the Office and its officers and employees immediately before the effective date of the Patent and Trademark Office Corporation Act of 1995, shall continue in effect with respect to the Office and its officers and employees until modified, superseded, or set aside by the Office or a court of appropriate jurisdiction or by operation of law.

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§5. Patent and Trademark Office Management Advisory Board

(a) COMPENSATION.—

(1) APPOINTMENT.—The Patent and Trademark Office shall have a Management Advisory Board (hereafter in this title referred to as the "Board") of 18 members, 6 of whom shall be appointed by the President, 6 of whom shall be appointed by the

Speaker of the House of Representatives, and 6 of whom shall be appointed by the President pro tempore of the Senate. Not more than 4 of the 6 members appointed by each appointing authority shall be members of the same political party.

(2) TERMS.—Members of the Board shall be appointed for a term of 6 years each, except that of the members first appointed by each appointing authority, 1 shall be for a term of 1 year, 1 shall be for a term of 2 years, 1 shall be for a term of 3 years, 1 shall be for a term of 4 years, and 1 shall be for a term of 5 years. No member may serve more than 1 term.

(3) CHAIR.—The President shall designate the chair of the Board, whose term as chair shall be for 3 years.

(4) TIMING OF APPOINTMENTS.—Initial appointments to the Board shall be made within 3 months after the effective date of the Patent and Trademark Office Corporation Act of 1995, and vacancies shall be filled within 3 months after they occur.

(5) VACANCIES.—Vacancies shall be filled in the manner in which the original appointment was made under this subsection. Members appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor is appointed.

(b) BASIS FOR APPOINTMENTS.—Members of the Board shall be citizens of the United States who shall be chosen so as to represent the interests of diverse users of the Patent and Trademark Office, and shall include individuals with substantial background and achievement in corporate finance and management.

(c) APPLICABILITY OF CERTAIN ETHICS LAWS.—Members of the Board shall be special Government employees within the meaning of section 202 of title 18.

(d) MEETINGS.—The Board shall meet at the call of the chair to consider an agenda set by the chair.

(e) DUTIES.—The Board shall—

(1) review the policies, goals, performance, budget, and user fees of the Patent and Trademark Office, and advise the Commissioner on these matters; and

(2) within 60 days after the end of each fiscal year, prepare an annual report on the matters referred to in paragraph (1), transmit the report to the President and the Committees on the Judiciary of the Senate and the House of Representatives, and publish the report in the Patent and Trademark Office Official Gazette.

(f) STAFF.—The Board shall employ a staff and procure support services for the staff adequate to enable the Board to carry out its functions, using funds available to the Commissioner under section 42 of this title. Persons employed by the Board shall receive compensation as determined by the Board, serve in accordance with terms and conditions of employment established by the Board, and be subject solely to the direction of the Board, notwithstanding any other provision of law.

(g) COMPENSATION.—Members of the Board may accept reimbursement for expenses incurred in attending meetings of the Board

and compensation not to exceed $1000 per day for each day in attendance at meetings of the Board.

(h) ACCESS TO INFORMATION.—Members of the Board shall be provided access to records and information in the Patent and Trademark Office, except for personnel or other privileged information and information concerning patent applications required to be kept in confidence by section 122 of this title.

(i) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to meetings of the Board, but all meetings of the Board shall be announced in the Federal Register at least 30 days in advance and all meetings shall be open to the public unless closed by the Board for good cause.

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§ 6. Duties of Commissioner

(a) The Commissioner⟦, under the direction of the Secretary of Commerce,⟧ shall superintend or perform all duties required by law respecting the granting and issuing of patents and the registration of trademarks; shall have the authority to carry on studies, programs, or exchanges of items or services regarding domestic and international patent and trademark law or the administration of the Patent and Trademark Office, including programs to recognize, identify, assess and forecast the technology of patented inventions and their utility to industry; and shall have charge of property belonging to the Patent and Trademark Office. He may⟦, subject to the approval of the Secretary of Commerce,⟧ establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office.

(b) The Commissioner⟦, under the direction of the Secretary of Commerce,⟧ may, in coordination with the Department of State, carry on programs and studies cooperatively with foreign patent offices and international intergovernmental organizations, or may authorize such programs and studies to be carried on, in connection with the performance of duties stated in subsection (a) of this section.

(c) The Commissioner⟦, under the direction of the Secretary of Commerce⟧, may, with the concurrence of the Secretary of State, transfer funds appropriated to the Patent and Trademark Office, not to exceed $100,000 in any year, to the Department of State for the purpose of making special payments to international intergovernmental organizations for studies and programs for advancing international cooperation concerning patents, trademarks, and related matters. These special payments may be in addition to any other payments or contributions to the international organization and shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the Government of the United States.

⟦§ 7. Board of Patent Appeals and Interferences

⟦(a) The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, who shall be appointed to the competitive service. The Commissioner, the Deputy Commissioner, the

Assistant Commissioners, and the examiners-in-chief shall constitute the Board of Patent Appeals and Interferences.

[(b) The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, review adverse decisions of examiners upon applications for patents and shall determine priority and patentability of invention in interferences declared under section 135(a) of this title. Each appeal and interference shall be heard by at least three members of the Board of Patent Appeals and Interferences, who shall be designated by the Commissioner. Only the Board of Patent Appeals and Interferences has the authority to grant rehearings.

[(c) Whenever the Commissioner considers it necessary, in order to keep current the work of the Board of Patent Appeals and Interferences, the Commissioner may designate any patent examiner of the primary examiner grade or higher, having the requisite ability, to serve as examiner-in-chief for periods not exceeding six months each. An examiner so designated shall be qualified to act as a member of the Board of Patent Appeals and Interferences. Not more than one of the members of the Board of Patent Appeals and Interferences hearing an appeal or determining an interference may be an examiner so designated. The Secretary of Commerce is authorized to fix the pay of each designated examiner-in-chief in the Patent and Trademark Office at not to exceed the maximum rate of basic pay payable for grade GS–16 of the General Schedule under section 5332 of title 5. The rate of basic pay of each individual designated examiner-in-chief shall be adjusted, at the close of the period for which that individual was designated to act as examiner-in-chief, to the rate of basic pay which that individual would have been receiving at the close of such period if such designation had not been made.]

§ 7. Board of Patent Appeals and Interferences

(a) ESTABLISHMENT AND COMPOSITION.—There shall be in the Patent and Trademark Corporation a Board of Patent Appeals and Interferences. The Commissioner, the Deputy Commissioner for Patents, the Deputy Commissioner for Trademarks, the officer principally responsible for the examination of patents, the officer principally responsible for the examination of trademarks, and the examiners-in-chief shall constitute the Board. The examiners-in-chief shall be persons of competent legal knowledge and scientific ability.

(b) DUTIES.—The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, review adverse decisions of examiners upon applications for patents and shall determine priority and patentability of invention in interferences declared under section 135(a) of this title. Each appeal and interference shall be heard by at least 3 members of the Board, who shall be designated by the Commissioner. Only the Board of Patent Appeals and Interferences may grant rehearings.

§ 8. Suits by and against the Corporation

(a) IN GENERAL.—

(1) ACTIONS UNDER UNITED STATES LAW.—Any civil action, suit, or proceeding to which the Patent and Trademark Office is a party is deemed to arise under the laws of the United

States. Exclusive jurisdiction over all civil actions by or against the Office is in the Federal courts as provided by law.

(2) CONTRACT CLAIMS.—Any action, suit, or proceeding against the Office founded upon contract shall be subject to the limitations and exclusive remedy provided in section 1346(a)(2) and sections 1491 through 1509 of title 28, whether or not such contract claims are cognizable under the sections 507, 1346, 1402, 1491, 1496, 1497, 1501, 1503, 2071, 2072, 2411, 2501, 2512 of title 28. For purposes of the Contract Disputes Act of 1978 (41 U.S.C. 601 and following), the Commissioner shall be deemed to be the agency head with respect to contract claims arising with respect to the Office.

(3) TORT CLAIMS.—Any action, suit, or proceeding against the Office founded upon tort shall be subject to the limitations and exclusive remedies provided in section 1346(b) and sections 2671 through 2680 of title 28, whether or not such tort claims are cognizable under section 1346(b) of title 28.

(4) PROHIBITION ON ATTACHMENT, LIENS, ETC.—No attachment, garnishment, lien, or similar process, intermediate or final, in law or equity, may be issued against property of the Office.

(5) SUBSTITUTION OF OFFICE AS PARTY.—The Office shall be substituted as defendant in any civil action, suit, or proceeding against an officer or employee of the Office, if the Office determines that the employee was acting within the scope of the officer or employee's employment with the Office. If the Office refuses to certify scope of employment, the officer or employee may at any time before trial petition the court to find and certify that the officer or employee was acting within the scope of the officer or employee's employment. Upon certification by the court, the Office shall be substituted as the party defendant. A copy of the petition shall be served upon the Office.

(b) RELATIONSHIP WITH JUSTICE DEPARTMENT.—

(1) EXERCISE BY OFFICE OF ATTORNEY GENERAL'S AUTHORITIES.—Except as provided in this section, in relation to all judicial proceedings in which the Office or an officer or employee thereof is a party or in which the officer or employee thereof is interested and which arise from or relate to officers or employees thereof acting within the scope of their employment, torts, contracts, property, registration of patent and trademark practitioners, patents or trademarks, or fees, the officer or employee thereof may exercise, without prior authorization from the Attorney General, the authorities and duties that otherwise would be exercised by the Attorney General on behalf of the officer or employee thereof under title 28, and other laws. In all other judicial or administrative proceedings in which the Office or an officer or employee of the Office is a party or is interested, the Office may exercise these authorities and duties only after obtaining authorization from the Attorney General.

(2) APPEARANCES BY ATTORNEY GENERAL.—The Attorney General may file an appearance on behalf of the Office or an employee of the Office, without the consent of the Office, in any suit in which the Office is a party and represent the Office with

exclusive authority in the conduct, settlement, or compromise of that suit.

(3) CONSULTATIONS WITH AND ASSISTANCE BY ATTORNEY GENERAL.—The Office may consult with the Attorney General concerning any legal matter, and the Attorney General shall provide advice and assistance to the Office, including representing the Office in litigation, if requested by the Office.

(4) REPRESENTATION BEFORE SUPREME COURT.—The Attorney General shall represent the Office in all cases before the United States Supreme Court.

(5) QUALIFICATIONS OF ATTORNEYS.—An attorney admitted to practice to the bar of the highest court of at least one State in the United States or the District of Columbia and appointed by the Office may represent the Office in any legal proceeding in which the Office or an officer or employee of the Office is a party or interested, regardless of whether the attorney is a resident of the jurisdiction in which the proceeding is held and notwithstanding any other prerequisites of qualification or appearance required by the court or administrative body.

§ [8] *9*. Library

The Commissioner shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Patent and Trademark Office to aid the officers in the discharge of their duties.

§ [9] *10*. Classification of patents

The Commissioner may revise and maintain the classification by subject matter of United States letters patent, and such other patents and printed publications as may be necessary or practicable, for the purpose of determining with readiness and accuracy the novelty of inventions for which applications for patent are filed.

§ [10] *11*. Certified copies of records

The Commissioner may furnish certified copies of specifications and drawings of patents issued by the Patent and Trademark Office, and of other records available either to the public or to the person applying therefor.

§ [11] *12*. Publications

(a) The Commissioner may print, or cause to be printed, the following:

1. Patents, including specifications and drawings, together with copies of the same. The Patent and Trademark Office may print the headings of the drawings for patents for the purpose of photolithography.

2. Certificates of trade-mark registrations, including statements and drawings, together with copies of the same.

3. The Official Gazette of the United States Patent and Trademark Office.

4. Annual indexes of patents and patentees, and of trade-marks and registrants.

5. Annual volumes of decisions in patent and trade-mark cases.

6. Pamphlet copies of the patent laws and rules of practice, laws and rules relating to trade-marks, and circulars or other publications relating to the business of the Office.

(b) The Commissioner may exchange any of the publications specified in items 3, 4, 5, and 6 of subsection (a) of this section for publications desirable for the use of the Patent and Trademark Office.

§ [12] *13*. Exchange of copies of patents with foreign countries

The Commissioner may exchange copies of specifications and drawings of United States patents for those of foreign countries.

§ [13] *14*. Copies of patents for public libraries

The Commissioner may supply printed copies of specifications and drawings of patents to public libraries in the United States which shall maintain such copies for the use of the public, at the rate for each year's issue established for this purpose in section 41(d) of this title.

[§ 14. Annual report to Congress

[The Commissioner shall report to Congress annually the moneys received and expended, statistics concerning the work of the Office, and other information relating to the Office as may be useful to the Congress or the public.]

§ 15. Annual report to Congress

The Commissioner shall report to the Congress, not later than 90 days after the end of each fiscal year, the moneys received and expended by the Office, the purposes for which the moneys were spent, the quality and quantity of the work of the Office, and other information relating to the Office.

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CHAPTER 3—PRACTICE BEFORE PATENT AND TRADEMARK OFFICE

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§ 32. Suspension or exclusion from practice

The Commissioner may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent and Trademark Office, any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 31 of this title, or who shall, by word, circular, letter, or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant, or other person having immediate or prospective business before the Office. The reasons for any such suspension or exclusion shall be duly recorded. *The Commissioner shall have the discretion to designate any officer or employee of the Patent and Trademark Office to conduct the hearing required by this section.* The United States District Court for the District of Columbia, under such conditions and upon such proceedings as it by its rules determines, may review the action of the Commissioner upon the petition of the person so refused recognition or so suspended or excluded.

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CHAPTER 4—PATENT FEES

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[§ 42. Patent and Trademark Office funding

[(a) All fees for services performed by or materials furnished by the Patent and Trademark Office will be payable to the Commissioner.

[(b) All fees paid to the Commissioner and all appropriations for defraying the costs of the activities of the Patent and Trademark Office will be credited to the Patent and Trademark Office Appropriation Account in the Treasury of the United States.

[(c) Revenues from fees shall be available to the Commissioner to carry out, to the extent provided in appropriation Acts, the activities of the Patent and Trademark Office. Fees available to the Commissioner under section 31 of the Trademark Act of 1946 may be used only for the processing of trademark registrations and for other activities, services, and materials relating to trademarks and to cover a proportionate share of the administrative costs of the Patent and Trademark Office.

[(d) The Commissioner may refund any fee paid by mistake or any amount paid in excess of that required.

[(e) The Secretary of Commerce shall, on the day each year on which the President submits the annual budget to the Congress, provide to the Committees on the Judiciary of the Senate and the House of Representatives—

[(1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;

[(2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;

[(3) budget plans for significant programs, projects, and activities of the Office, including out-year funding estimates;

[(4) any proposed disposition of surplus fees by the Office; and

[(5) such other information as the committees consider necessary.]

§ 42. Patent and Trademark Office funding

(a) FEES PAYABLE TO THE OFFICE.—All fees for services performed by or materials furnished by the Patent and Trademark Office shall be payable to the Office.

(b) USE OF MONEYS.—Moneys of the Patent and Trademark Office not otherwise used to carry out the functions of the Office shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed by the United States, or in obligations or other instruments which are lawful investments for fiduciary, trust, or public funds. Fees available to the Commissioner under this title shall be used exclusively for the processing of patent applications and for other services and materials relating to patents. Fees available to the Commissioner under section 31 of the Act of July 5, 1946 (commonly referred to as the "Trademark Act of 1946") (15 U.S.C. 1113) shall be used exclusively for the processing of trademark registrations and for other services and materials relating to trademarks.

(c) BORROWING AUTHORITY.—The Patent and Trademark Office is authorized to issue from time to time for purchase by the Secretary of the Treasury its debentures, bonds, notes, and other evidences of indebtedness (hereafter in this subsection referred to as "obligations") in an amount not exceeding $2,000,000 outstanding at any one time, to assist in financing its activities. Such obligations shall be redeemable at the option of the Office before maturity in the manner stipulated in such obligations and shall have such maturity as is determined by the Office with the approval of the Secretary of the Treasury. Each such obligation issued to the Treasury shall bear interest at a rate not less than the current yield on outstanding marketable obligations of the United States of comparable maturity during the month preceding the issuance of the obligation as determined by the Secretary of the Treasury. The Secretary of the Treasury shall purchase any obligations of the Office issued under this subsection and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter are extended to include such purpose. Payment under this subsection of the purchase price of such obligations of the Patent and Trademark Office shall be treated as public debt transactions of the United States.

§43. Audits

(a) IN GENERAL.—Financial statements of the Patent and Trademark Office shall be prepared on an annual basis in accordance with generally accepted accounting principles. Such statements shall be audited by an independent certified public accountant chosen by the Secretary. The audit shall be conducted in accordance with standards that are consistent with generally accepted Government auditing standards and other standards established by the Comptroller General, and with the generally accepted auditing standards of the private sector, to the extent feasible.

(b) REVIEW BY COMPTROLLER GENERAL.—The Comptroller General may review any audit of the financial statement of the Patent and Trademark Office that is conducted under subsection (a). The Comptroller General shall report to the Congress and the Office the results of any such review and shall include in such report appropriate recommendations.

(c) AUDIT BY COMPTROLLER GENERAL.—The Comptroller General may audit the financial statements of the Office and such audit

shall be in lieu of the audit required by subsection (a). The Office shall reimburse the Comptroller General for the cost of any audit conducted under this subsection.

(d) ACCESS TO OFFICE RECORDS.—All books, financial records, report files, memoranda, and other property that the Comptroller General deems necessary for the performance of any audit shall be made available to the Comptroller General.

(e) APPLICABILITY IN LIEU OF TITLE 31 PROVISIONS.—This section applies to the Office in lieu of the provisions of section 9105 of title 31.

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SECTION 17 OF THE ACT OF JULY 5, 1946

(commonly referred to as the Trademark Act of 1946)

[SEC. 17. In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Commissioner shall give notice to all parties and shall direct a Trademark Trial and Appeal Boards, to determine and decide the respective rights of registration.

[The Trademark Trail and Appeal Board shall include the Commissioner, the Deputy Commissioner, the Assistant Commissioners, and members appointed by the Commissioner. Employees of the Patent and Trademark Office and other persons, all of whom shall be competent in trademark law, shall be eligible for appointment as members. Each case shall be heard by at least three members of the Board, the members hearing such case to be designated by the Commissioner.]

SEC. 17. (a) In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Commissioner shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

(b) The Trademark Trial and Appeal Board shall include the Commissioner, the Deputy Commissioner for Patents, the Deputy Commissioner for Trademarks, and members competent in trademark law who are appointed by the Commissioner.

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SECTION 602 OF THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

SEC. 602. REPEAL AND SAVING PROVISIONS.

(a) * * *

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(d) Nothing in this Act shall impair or affect any authority of—

(1) * * *

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(20) the Secretary of the Interior with respect to procurement for program operations under the Bonneville Project Act of 1937 (50 Stat. 731), as amended; ⟦or⟧

(21) the Director of the International Communication Agency with respect to the furnishing of facilities in foreign countries and reception centers within the United States⟦.⟧*; or*

(22) the Patent and Trademark Office.

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ACT OF FEBRUARY 14, 1903

CHAP. 552.—An Act To establish the Department of Commerce and Labor

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BUREAUS IN DEPARTMENT

SEC. 12. The following named bureaus, administrations, services, offices, and programs of the public service, and all that pertains thereto, shall be under the jurisdiction and subject to the control of the Secretary of Commerce:

⟦(a)⟧ *(1)* National Oceanic and Atmospheric Administration;

⟦(b)⟧ *(2)* United States Travel Service;

⟦(c)⟧ *(3)* National Bureau of Standards;

⟦(d) Patent Office;⟧

⟦(e)⟧ *(4)* Bureau of the Census;

⟦(f)⟧ *(5)* Administration; United States Fire; and

⟦(g)⟧ *(6)* such other bureaus or other organizational units as the Secretary of Commerce may from time to time establish in accordance with law.

ACT OF APRIL 12, 1992

⟦No. 8.⟧ Joint resolution to encourage the establishment and endowment of institutions of learning at the national capital by defining the policy of the Government with reference to the use of its literary and scientific collections by students.

Whereas, large collections illustrative of the various arts and sciences and facilitating literary and scientific research have been accumulated by the action of Congress through a series of years at the national capital; and

Whereas, it was the original purpose of the Government thereby to promote research and the diffusion of knowledge, and is now the settled policy and present practice of those charged with the care of these collections specially to encourage students who devote their time to the investigation and study of any branch of knowledge by allowing to them all proper use thereof; and

Whereas it is represented that the enumeration of these facilities and the formal statement of this policy will encourage the establishment and endowment of institutions of learning at the seat of Government, and promote the work of education by attracting students to avail themselves of the advantages aforesaid under the direction of competent instructors: Therefore,

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That the facilities for research and illustration in the following and any other Governmental collections now existing or hereafter to be established in the city of Washington for the promotion of knowledge shall be accessible, under such rules and restrictions as the officers in charge of each collection may prescribe, subject to such authority as is now or may hereafter be permitted by law, to the scientific investigators and to students or any institution of higher education now incorporated or hereafter to be incorporated under the laws of Congress or of the District of Columbia, to wit:

One. Of the Library of Congress.
Two. Of the National Museum.
Three. Of the ⟦Patent Office⟧ *Patent and Trademark Office.*
Four. Of the Bureau of Education.
Five. Of the Bureau of Ethnology.
Six. Of the Army of Medical Museum.
Seven. Of the Department of Agriculture.
Eight. Of the Fish Commission.
Nine. Of the Botanic Gardens.
Ten. Of the Coast and Geodetic Survey.
Eleven. Of the Geological Survey.
Twelve. Of the Naval Observatory.

FEDERAL FOOD, DRUG, AND COSMETIC ACT

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CHAPTER V—DRUGS AND DEVICES

SUBCHAPTER A—DRUGS AND DEVICES

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NEW DRUGS

SEC. 505. (a) * * *

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(m) For purposes of this section, the term "patent" means a patent issued by the Patent and Trademark Office ⟦of the Department of Commerce⟧.

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NEW ANIMAL DRUGS

SEC. 512.(a) * * *

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(o) For purposes of this section, the term "patent" means a patent issued by the Patent and Trademark Office ⟦of the Department of Commerce⟧.

* * * * * * *

SECTION 105 OF THE FEDERAL ALCOHOL ADMINISTRATION ACT

UNFAIR COMPETITION AND UNLAWFUL PRACTICES

SEC. 105. It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate:

(a) * * *

* * * * * * *

TITLE 28, UNITED STATES CODE

* * * * * * *

PART V—PROCEDURE

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CHAPTER 115—EVIDENCE; DOCUMENTARY

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§ 1744. Copies of [Patent Office] *Patent and Trademark Office documents, generally*

Copies of letters patent or of any records, books, papers, or drawings belonging to the [Patent Office] *Patent and Trademark Office* and relating to patents, authenticated under the seal of the [Patent Office] *Patent and Trademark Office* and certified by the [Commissioner of Patents] *Commissioner of Patents and Trademarks,* or by another officer of the [Patent Office] *Patent and Trademark Office* authorized to do so by the Commissioner, shall be admissible in evidence with the same effect as the originals.

Any person making application and paying the required fee may obtain such certified copies.

§ 1745. Copies of foreign patent documents

Copies of the specifications and drawings of foreign letters patent, or applications for foreign letters patent, and copies of excerpts of the official journals and other official publications of foreign patent offices belonging to the [United States Patent Office] *Patent and Trademark Office,* certified in the manner provided by section 1744 of this title are prima facie evidence of their contents and of the dates indicated on their face.

* * * * * * *

CHAPTER 123—FEES AND COSTS

§ 1928. Patent infringement action; disclaimer not filed

Whenever a judgment is rendered for the plaintiff in any patent infringement action involving a part of a patent and it appears that the patentee, in his specifications, claimed to be, but was not, the original and first inventor or discoverer of any material or substantial part of the thing patented, no costs shall be included in such judgment, unless the proper disclaimer has been filed in the 【Patent Office】 *Patent and Trademark Office* prior to the commencement of the action.

* * * * * * *

SECTION 305 OF THE NATIONAL AERONAUTICS AND SPACE ACT OF 1958

PROPERTY RIGHTS IN INVENTIONS

SEC. 305. (a) * * *

* * * * * * *

(c) No patent may be issued to any applicant other than the Administrator for any invention which appears to the 【Commissioner of Patents】 *Commissioner of Patents and Trademarks* to have significant utility in the conduct of aeronautical and space activities unless the applicant files with the Commissioner, with the application or within thirty days after request therefor by the Commissioner, a written statement executed under oath setting forth the full facts concerning the circumstances under which such invention was made and stating the relationship (if any) of such invention to the performance of any work under any contract of the Administration. Copies of each such statement and the application to which it relates shall be transmitted forthwith by the Commissioner and the Administrator.

* * * * * * *

SECTION 12 OF THE SOLAR HEATING AND COOLING DEMONSTRATION ACT OF 1974

DISSEMINATION OF INFORMATION AND OTHER ACTIONS TO PROMOTE PRACTICAL USE OF SOLAR HEATING AND COOLING TECHNOLOGIES

SEC. 12. (a) The Secretary shall take all possible steps to assure that full and complete information with respect to the demonstrations and other activities conducted under this Act is made available to Federal, State, and local authorities, the building industry and related segments of the economy, the scientific and technical community, and the public at large, both during and after the close of the programs under this Act, with the objective of promoting and facilitating to the maximum extent feasible the early and widespread practical use of solar energy for the heating and cooling of buildings throughout the United States. In accordance with regulations prescribed under section 16 such information shall be disseminated on a coordinated basis by the Secretary, the Administrator, the Director of the National Bureau of Standards, the Director, the 【Commissioner of the Patent Office】 *Commissioner of Patents and Trademarks*, and other appropriate Federal offices and agencies.

* * * * * * *

SECTION 10 OF THE TRADING WITH THE ENEMY ACT

SEC. 10. That nothing contained in this Act shall be held to make unlawful any of the following Acts:

(a) * * *

* * * * * * *

(i) Whenever the publication of an invention by the granting of a patent may, in the opinion of the President, be detrimental to the public safety or defense, or may assist the enemy or endanger the successful prosecution of the war, he may order that the invention be kept secret and withhold the grant of a patent until the end of the war: *Provided*, That the invention disclosed in the application for said patent may be held abandoned upon it being established before or by the [Commissioner of Patents] *Commissioner of Patents and Trademarks* that, in violation of said order, said invention has been published or that an application for a patent therefor has been filed in any other country, by the inventor or his assigns or legal representatives, without the consent or approval of the commissioner or under a license of the President.

When an applicant whose patent is withheld as herein provided and who faithfully obeys the order of the President above referred to shall tender his invention to the Government of the United States for its use, he shall, if he ultimately receives a patent, have the right to sue for compensation in the United States Claims Court, such right to compensation to begin from the date of the use of the invention by the Government.

* * * * * * *

(e) LABELING.—To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, with respect to packaging, marking, branding, and labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by State law and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or importer of the product; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements on the label that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; and (5) as will prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, and as will prevent the use of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided,* That this clause shall not apply to the use of the name of any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, wine, or malt beverages, nor to the use by any person of a trade or brand name used by him or his predecessor in interest prior to the date of the enactment of this title; including regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported products: *Provided further,* That nothing herein nor any decision, ruling, or regulation of any Department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States ⟦Patent Office⟧ *Patent and Trademark Office* which has been used by such person or predecessors in the United States for a period of at least five years last past, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Administrator authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection, (1) no bottler of distilled spirits, no producer, blender, or wholesaler of wine, or proprietor of a bonded wine storeroom, and no brewer or wholesaler of malt beverages shall bottle, and (2) no person shall remove from customs custody, in bottles, for sale or any other commercial purpose, distilled spirits, wine, or malt beverages, respectively, after such date as the Administrator fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than August 15, 1936, in the case of distilled spirits, December 15, 1936, in the case of wine and malt beverages, and only after thirty days' public notice), unless, upon application to the Administrator, he has obtained and has in his possession a certificate of label approval covering the distilled spirits, wine, or malt beverages, issued by the Administrator in such manner and form as he shall by regulations prescribe: *Provided,* That any such bottler of distilled spirits, or producer, blender, or wholesaler of wine, or proprietor of a bonded wine storeroom, or brewer or wholesaler of malt beverages shall be exempt from the requirements of this subsection if, upon application to the Administrator, he shows to the satisfaction of the Administrator that the distilled spirits, wine, or malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. Officers of internal revenue are authorized and directed to withhold the release of distilled spirits from the bottling plant unless such certificates have been obtained, or unless the application of the bottler for exemption has been granted by the Administrator; and customs officers are authorized and directed to withhold the release from customs custody of distilled spirits, wine, and malt beverages, unless such certificates have been obtained. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part any final action by the Administrator upon any application under this subsection; or

* * * * * * *

SECTION 255 OF THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

SEC. 255. EXEMPT PROGRAMS AND ACTIVITIES.—

(a) * * *

* * * * * * *

(g) OTHER PROGRAMS AND ACTIVITIES.—

(1)(A) The following budget accounts and activities shall be exempt from reduction under any order issued under this part;

Activities resulting from private donations, bequests, or voluntary contributions to the Government;

Administration of Territories, Northern Mariana Islands Covenant grants (14–0412–0–1–806);

Thrift Savings Fund (26–8141–0–7–602);

* * * * * * *

United States Enrichment Corporation;

Patent and Trademark Office;

* * * * * * *

COMMITTEE COST ESTIMATE

The committee accepts the cost estimate of the Congressional Budget Office with the exception of the receipts that would be raised by selling Federal laboratories within the Department of Commerce.

The proposed legislative language requires any private sector purchaser of a laboratory to intend "to perform substantially the same functions as were performed by the laboratories." CBO apparently attributes no receipts from the sale of Federal laboratories because it believes that few, it any, potential buyers would either qualify as "intending to perform the same functions" or be willing to pay for the privilege of performing functions for which the Federal Government currently loses money. The committee concludes, however, that the enormous value of the assets owned by the Department of Commerce laboratories would attract buyers willing to pay for those valuable assets in exchange for incurring the cost, if any, of ensuring that the functions of those laboratories continue. The committee's conclusion is based on three findings: First, the assets of DOC laboratories have enormous market value; second, many, if not all, functions of DOC laboratories would continue to be performed if the DOC laboratories closed and no public funding were earmarked for those functions; and third, under the provisions of the proposed legislative language, a joint venture of private and academic interests—or an intermediary party—could "intend" to perform the functions of a DOC laboratory and could profitably purchase the assets of the DOC laboratory.

(1) The assets of DOC laboratories have enormous market value. According to the March 1992 NIST Report on the Facilities of the National Institute of Standards and Technology, "NIST's headquarters site in Gaithersburg, MD * * * includes 29 buildings located on 234 hectares (578 acres). Its Boulder, CO., field site * * * consists of 16 buildings on 83 hectares (205 acres). The current value of the facilities on both sites exceeds $2 billion." When combined with laboratories within the National Telecommunications and Information Administration [NTIA] and the National Oceanic and Atmospheric Administration [NOAA], the value of laboratories to be privatized far exceeds the $2 billion 1992 estimate of NIST laboratories alone.

(2) Many if not all functions of DOC laboratories would continue to be performed if the DOC laboratories closed and no public funding were earmarked for those functions. Although the NIST, NOAA, and NTIA laboratories perform many different functions, many if not all of these functions are already also performed by one or more private or academic laboratories around the country. Moreover, if Federal support for the Department of Commerce laboratories ended without other provision in law, many of the essential functions of these laboratories upon which either government or industry presently rely would almost certainly be adopted elsewhere.

(3) Under the provisions of the proposed legislative language, a joint venture of private and academic interests—or an intermediary party—could intend to perform the functions of a DOC laboratory and could profitably purchase the assets of the DOC laboratory. The standard of a party with "intent" to perform these functions could be met either by first, a consortium of these private and academic laboratories, or second, a third party that could pay these laboratories a small sum to perform these functions that they would already perform. Consequently, it is only the non-essential functions of these Department of Commerce laboratories—those functions that would not be performed absent government funding—that

would lead to a substantial cost and performance of a laboratory function that would not otherwise occur. The cost of performing these non-essential functions—and only that cost—would be deducted from the price that a purchaser would be willing to pay for the assets of the laboratory. The Commerce Committee believes that the costs of performing these non-essential functions are small relative to the market value of the assets of the laboratories.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, a letter from the Congressional Budget Office providing a cost estimate for all six subtitles of title III follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 6, 1995.

Hon. THOMAS J. BLILEY, JR.,
Chairman, Committee on Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for selected reconciliation recommendations of the House Committee on Commerce. This estimate encompasses all provisions approved by the committee except these dealing with health programs. CBO's evaluation of the committee's health-related recommendations will be provided in a separate cost estimate.

The estimate shows the budgetary effects of the committee's proposals over the 1996–2002 period. CBO understands that the Committee on the Budget will be responsible for interpreting how these proposals compare with the reconciliation instructions in the budget resolution.

This estimate assumes the reconciliation bill will be enacted by November 15, 1995; the estimate could change if the bill is enacted later.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
(For June E. O'Neill, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.
2. Bill title: Reconciliation recommendations of the House Committee on Commerce (except health-related recommendations).
3. Bill status: As approved by the House Committee on Commerce on or before September 19, 1995.
4. Bill purpose: The Commerce Committee approved recommendations for six program areas other than health:

Spectrum Auctions. Subtitle A would instruct the Federal Communications Commission [FCC] to use competitive bidding to assign licenses for most mutually exclusive applications of the electromagnetic spectrum. This provision would amend current law by broadening the FCC's authority to use competitive bidding to assign licenses. Current law restricts the use of competitive bidding to those mutually exclusive applications in which the licensee would receive compensation from subscribers to a communications service. Subtitle A also would extend the time period during which the FCC may use competitive bidding for licenses from 1998 to 2002. In addition, subtitle A would:

Require the FCC to use competitive bidding to assign licenses for 100 megahertz [MHz] of spectrum located below 3 gigahertz [GHz] and currently not designated for auction by the FCC or identified by previous law as spectrum available for transfer from Federal to non-Federal use;

Require the Department of Commerce, through the National Telecommunications and Information Administration [NTIA], to reallocate from Federal to non-Federal use a single frequency band of at least 20 MHz of the electromagnetic spectrum located below 3 GHz, and require the FCC to allocate that spectrum by auction;

Authorize appropriations for fiscal year 1996 for the FCC;

Allow the FCC to issue blanket licenses by rule for radio equipment on airplanes and ships and for personal radio services; and

Authorize the FCC to deposit in an interest-bearing escrow account up-front payments from prospective bidders in an auction.

Nuclear Regulatory Commission annual charge. Subtitle B would extend through 2002 the annual fees that offset spending by the Nuclear Regulatory Commission [NRC].

United States Enrichment Corporation. Subtitle C would provide a legislative framework for converting the United States Enrichment Corporation [USEC] from Federal to private ownership and for resolving various policy issues related to the uranium industry.

Waste Isolation Pilot Project. Subtitle D would modify the Waste Isolation Pilot Plant [WIPP] Land Withdrawal Act to provide for earlier opening of the facility.

Naval Petroleum Reserves. Subtitle F would require that the Department of Energy [DOE] sell all of the Naval Petroleum Reserves [NPR] and would authorize various methods for settling certain claims related to Reserve 1 (Elk Hills).

Department of Commerce. The Commerce Committee's reconciliation recommendations would abolish the Department of Commerce by eliminating some of its components and transferring certain functions to other agencies. This subtitle also would create a Commerce Programs Resolution Agency, which would manage any activities associated with terminating and transferring programs and agencies. Specifically, the subtitle would:

Abolish the Economic Development Administration, the Minority Business Development Administration, the Technology Administration, the Advanced Technology Program, the Manufacturing Extension Programs, and the U.S. Travel and Tourism Administration;

Create the United States Trade Administration [USTA], which would carry out the functions of the United States Trade Representative [USTR], the National Institute of Standards and Technology [NIST], the National Telecommunications and

Information Administration [NTIA], the Bureau of Export Administration, and the International Trade Administration;

Direct the administrator of the USTA to sell NIST's laboratories;

Abolish several programs within the National Oceanic and Atmospheric Administration [NOAA] and transfer the rest of its functions to the U.S. Department of Agriculture.

Direct the Administrator of the Commerce Programs Resolution Agency to sell the laboratories and other properties of the NTIA and the National Technical Information Service;

Create the Federal Statistics Agency, which would carry out the functions of the Bureau of the Census, the Bureau of Economic Analysis, and statistical management functions of the Office of Management and Budget; and

Change the operation and administration of the Patent and Trademark Office [PTO] by establishing it as a wholly owned government corporation.

5. Estimated cost to the Federal Government: CBO estimates that the provisions outlined above would reduce direct spending by about $13.7 billion over the 1996–2002 period. In addition, we estimate that these provisions would yield asset sale receipts of about $3.3 billion, for a total reduction in mandatory outlays of about $17 billion over the next 7 years. Finally, these provisions would make changes in discretionary programs—most notably by eliminating the Department of Commerce—but those changes would be reflected in future appropriations action.

Table 1 summarizes the budgetary effects of these proposals for the 1996–2002 period.

TABLE 1.—BUDGETARY IMPACT OF THE RECONCILIATION PROPOSALS OF THE HOUSE COMMITTEE ON COMMERCE

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
CHANGES IN DIRECT SPENDING							
Spectrum auctions:							
Estimated budget authority	−153	−1,802	−2,653	−3,554	−3,103	−2,652	−1,401
Estimated outlays	−153	−1,802	−2,653	−3,554	−3,103	−2,652	−1,401
NRC changes:							
Estimated budget authority	—	—	—	−330	−330	−330	−330
Estimated outlays	—	—	—	−330	−330	−330	−330
Uranium enrichment:							
Estimated budget authority	—	—	—	—	—	—	—
Estimated outlays	306	8	−10	−88	−159	−80	20
Naval petroleum reserves:							
Estimated budget authority	—	351	470	445	424	401	379
Estimated outlays	—	351	470	445	424	401	379
Department of Commerce [1]:							
Estimated budget authority	216	115	121	—	—	—	—
Estimated outlays	92	94	138	84	43	—	—
Total—Direct spending:							
Estimated budget authority	63	−1,336	−2,062	−3,439	−3,009	−2,581	−1,352
Estimated outlays	245	−1,349	−2,055	−3,443	−3,125	−2,661	−1,332
RECEIPTS FROM ASSET SALES [2]							
Uranium enrichment:							
Estimated budget authority	−500	−1,100	−15	−30	−31	−32	−33
Estimated outlays	−500	−1,100	−15	−30	−31	−32	−33
Naval petroleum authority							
Estimated budget authority	—	−1,550	—	—	—	—	—

TABLE 1.—BUDGETARY IMPACT OF THE RECONCILIATION PROPOSALS OF THE HOUSE COMMITTEE ON COMMERCE—Continued

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
Estimated outlays	—	−1,550	—	—	—	—	—
Department of Commerce:							
Estimated budget authority	6	−13	—	—	—	—	—
Estimated outlays	6	−13	—	—	—	—	—
Total—Asset sales:							
Estimated budget authority	−494	−2,663	−15	−30	−31	−32	−33
Estimated outlays	−494	−2,663	−15	−30	−31	−32	−33
CHANGES IN SPENDING SUBJECT TO APPROPRIATIONS ACTION							
FCC:							
Estimated authority level	186	—	—	—	—	—	—
Estimated outlays	175	11	—	—	—	—	—
Naval petroleum reseves:							
Estimated authority level	6	—	105	—	—	—	—
Estimated outlays	5	1	105	—	—	—	—
Waste isolation pilot project:							
Estimated authority level	3	20	−149	−4	−4	−4	−4
Estimated outlays	18	22	−80	−49	−16	−4	−4
Department of Commerce:							
Estimated authority level	1,726	1,832	1,858	1,866	1,868	1,870	1,870
Estimated outlays	1,049	1,601	1,725	1,838	1,853	1,865	1,867
Total—Subject to appropriations:							
Estimated authority level	1,948	1,852	1,814	1,852	1,864	1,866	1,866
Estimated outlays	1,247	1,635	1,750	1,789	1,837	1,861	1,863

[1] The House Committee on the Judiciary recommended extending the PTO's surcharge fees through 2002 for reconciliation. If the recommendations of both the Judiciary Committee and the Commerce Committee were to be included in the reconciliation bill, then the direct spending for the Commerce Committee would increase by $476 million in budget authority and $347 million in outlays over the 1999–2002 period.

[2] Under the 1996 budget resolution, proceeds from asset sales are counted in the budget totals for purposes of Congressional scoring. Under the Balanced Budget Act, however, proceeds from asset sales are not counted in determining compliance with the discretionary spending limits or pay-as-you-go requirement.

The costs of this bill fall within budget functions 050, 270, 300, 370, 450, 500, 800, and 950.

6. Basis of estimate: This estimate assumes that the reconciliation bill will be enacted on November 15, 1995; the estimate could change if the bill is enacted later.

Receipts from Spectrum Auctions. CBO expects that receipts from the spectrum auctions authorized under subtitle A would result primarily from the auctioning of licenses permitting a wide variety of uses of the electromagnetic spectrum. Under current law, the authority to use competitive bidding to assign licenses expires in 1998 and the FCC would assign those licenses by comparative hearings or some other means. CBO has estimated the amount of receipts that could be obtained by auctioning such licenses instead. Although most of these potential receipts would accrue after 1998, we estimate some increase in receipts in earlier years because of the bill's provisions that would broaden the FCC's auction authority beginning in 1996.

CBO assumes that the licenses auctioned would grant the same property rights as current licenses. The licensee would have a very high expectation that the license would be renewed upon expiration, and that the license would not be auctioned again when it expires. Auctions would be open to all bidders who would qualify to hold an FCC license under current law.

CBO estimates that the spectrum auctions authorized under subtitle A would raise about $15.3 billion over the 1996–2002 period.

CBO's estimate of auction receipts is based on expectations about the availability of frequencies for assignment by auction and the market price that those frequencies would fetch when sold. CBO has priced the frequencies available for auction by taking into account the prices paid for roughly comparable frequencies at FCC auctions held in 1994 and 1995, and the effect on prices in the future of the increased supply of licenses permitting the use of the radio spectrum. The estimate also accounts for the receipts that could be generated from auctioning licenses in circumstances where the use of the spectrum is limited exclusively to one service as well as in those circumstances where the spectrum is shared with other non-interfering uses or users providing a different service.

The bill would authorize the FCC to deposit up-front payments from prospective bidders in an auction in an interest-bearing escrow account. The interest earned from the upfront payments of the winning or accepted bid would be deposited in the general fund of the Treasury. Based on information from the FCC, we estimate that additional receipts to the Treasury from these interest earnings would be about $18 million over the 1996–2002 period. These receipts are included in the estimates for spectrum auctions shown in table 2.

TABLE 2.—BUDGETARY IMPACT OF THE RECONCILIATION PROPOSAL FOR SPECTRUM AUCTIONS

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000	2001	2002
DIRECT SPENDING								
Offsetting receipts under current law:								
Estimated budget authority	−7,644	−2,800	−600	−800	−700	−700	0	0
Estimated outlays	−7,644	−2,800	−600	−800	−700	−700	0	0
Proposed changes:								
Estimated budget authority	—	−153	−1,802	−2,653	−3,554	−3,103	−2,652	−1,401
Estimated outlays	—	−153	−1,802	−2,653	−3,554	−3,103	−2,652	−1,401
Offsetting receipts under proposal:								
Estimated budget authority	−7,644	−2,953	−2,402	−3,453	−4,254	−3,803	−2,652	−1,401
Estimated outlays	−7,644	−2,953	−2,402	−3,453	−4,254	−3,803	−2,652	−1,401

Annual Charges of the Nuclear Regulatory Commission. This provision would extend through 2002 NRC's authority to charge fees to offset 100 percent of its appropriation. Under current law, after 1998 the NRC would only be authorized to set fees equal to 33 percent of its budget. Assuming future appropriations for the NRC remain at the 1995 level, enactment of this provision would increase offsetting receipts by $330 million annually over the 1999–2002 period. Under rules set in the Budget Enforcement Act of 1990, CBO's baseline projection of NRC spending for that period is based on the net spending level in 1995. Because that level reflects 100 percent recovery of appropriations from the general fund, the proposal to extend such full-cost recovery does not produce savings relative to the CBO baseline. The 1996 budget resolution, however, adjusted the baseline to reflect current law by changing the assumed rate of cost recovery from 100 percent to 33 percent in 1999. Hence, extending the full-cost recovery provision produces savings of $330 million relative to the budget resolution baseline. These changes are summarized in table 3.

TABLE 3.—BUDGETARY IMPACT OF THE RECONCILIATION PROPOSAL ON THE ANNUAL CHARGES OF THE NUCLEAR REGULATORY COMMISSION

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000	2001	2002
DIRECT SPENDING								
Spending under current law:								
Estimated budget authority	−504	−504	−504	−504	−174	−174	−174	−174
Estimated outlays	−504	−504	−504	−504	−174	−174	−174	−174
Proposed changes:								
Estimated budget authority	—	—	—	—	−330	−330	−330	−330
Estimated outlays	—	—	—	—	−330	−330	−330	−330
Spending under proposal:								
Estimated budget authority	−504	−504	−504	−504	−504	−504	−504	−504
Estimated outlays	−504	−504	−504	−504	−504	−504	−504	−504

United States Enrichment Corporation. While it is possible the USEC could become a private corporation under current law, such action does not appear likely because of numerous policy and contractual concerns. Hence, CBO believes that USEC would remain a government-owned entity under current law and that enacting this bill would be sufficient to remove the policy impediments to privatization. The bill would divide assets and liabilities of the corporation between the Federal Government and a privatized corporation, clarifying responsibility for employee benefits, the disposal of low-level radioactive wastes, the purchase and marketing of materials derived from highly-enriched uranium [HEU] from United States and Russian nuclear warheads, and other corporate activities. Under this bill, the private corporation would be given the rights to certain licenses and assets related to advanced laser isotope separation technology developed by the Federal Government.

CBO estimates that privatizing USEC would have the effect of reducing Federal outlays by a total of $1,876 million over the 1996–2002 period. Most of this total would be derived from selling USEC to the private sector, which CBO estimates would yield $1.65 billion over the 1996–97 period under the provisions in this bill. We estimate that USEC would spend slightly more than $300 million over the same 2 years to facilitate the sale, including a purchase of Russian uranium. Once the corporation is sold, additional budgetary impacts would result from the removal of USEC's spending and receipts from the budget and from the eventual resale by DOE of uranium bought by USEC and transferred to DOE prior to privatization. Table 4 summarizes the estimated budgetary effects of this provision.

Based on the information provided by USEC, DOE, and the Department of the Treasury, we estimate that privatization through a stock offering or merger would yield about $1.6 billion in asset sale proceeds over fiscal years 1996 and 1997, net of any transfer of cash balances held at the Treasury. Projected sale proceeds include an estimated $100 million resulting from the proposed transfer of 50 metric tons of U.S. HEU and 7,000 metric tons of natural uranium from DOE to the corporation prior to privatization. While $1.6 billion represents CBO's best estimate of the net proceeds, the net sales price could range from $1.3 billion to $1.9 billion, depending on how potential purchasers value USEC's contracts, assets, and prospects for the future.

Direct spending for USEC's operations as a government corporation would change as a result of privatization and other legislative directives. USEC's direct spending is projected to increase by $306 million in 1996 and $8 million in 1997 because of the costs associated with sale transactions, the equipment and facility upgrades necessary to complete the sale, and the requirement in this bill to transfer to DOE without charge the natural uranium associated with at least 18 metric tons of HEU purchased from Russia. Once USEC is sold, its net spending under current law would no longer be part of the Federal budget. CBO estimates that these savings would total over $300 million over the 1998–2002 period.

Under this bill, CBO estimates that DOE's sale of the natural uranium derived from the 18 metric tons of Russian HEU transferred by USEC would result in asset sale proceeds totaling $140 million over the 1998–2002 period, and about $90 million thereafter. Under this bill, DOE would be required to sell these materials within 7 years after enactment, subject to certain conditions. For the purposes of this estimate, and in the absence of a legislative requirement that DOE be paid for the materials within that timeframe, we assume that DOE would sell the materials for delivery and payment over a period of 7 to 8 years beginning in 1998.

TABLE 4.—BUDGETARY IMPACT OF THE RECONCILIATION PROPOSAL FROM THE UNITED STATES ENRICHMENT CORPORATION

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000	2001	2002
RECEIPTS FROM ASSET SALES								
Uranium enrichment:								
Estimated budget authority ...	....	−500	−1,100	−15	−30	−31	−32	−33
Estimated outlays	....	−500	−1,100	−15	−30	−31	−32	−33
DIRECT SPENDING								
Spending under current law:								
Estimated budget authority ...	....	....	....	....	....	....	....	....
Estimated outlays	−335	−183	−88	10	88	159	80	−20
Proposed changes:								
Estimated budget authority ...	....	....	....	....	....	....	....	....
Estimated outlays	....	306	8	−10	−88	−159	−80	20
Spending under proposal:								
Estimated budget authority ...	....	....	....	....	....	....	....	....
Estimated outlays	−335	123	−80	....	....	....	....	....

Naval Petroleum Reserves. Under the provisions if this bill, the sale of the reserves would have three types of budgetary impacts over the 1996–2002 period (see table 5). First, we estimate that selling all of the reserves would yield about $1.55 billion in nonroutine asset sale receipts, of which about $1.5 billion would be collected from the sale of Elk Hills and the remainder from the sale of reserves in Colorado, Wyoming, and Utah. We expect that the proceeds would be collected in fiscal year 1997, consistent with the directive in the bill to complete the sales by December 31, 1996. Under this bill, the costs associated with administering the sales, which are estimated to total $6 million, would be deducted from the proceeds. We assume, however, that DOE would need to use appropriated funds in 1996 to pay for the services and activities specified in the bill. Hence, the table shows an estimated authorization for those administrative costs in 1996 and outlays in 1996 and 1997.

Second, once the sales are completed, the government would forgo the offsetting receipts that would otherwise have been collected from production and sale of oil, gas, and related products from the reserves. These receipts, which are included in budget function 270, are projected to total over $400 million annually under current law over most of the 1997–2002 period. Assuming that the sale would be completed by the end of December 1996, we estimate that the loss of receipts from the sale of NPR would begin by the second quarter of the fiscal year. The loss would reach $470 million in 1998 and decline gradually to 379 million in 2002.

Third, the bill would authorize alternative methods of settling certain claims made by the State of California related to Elk Hills, including appropriations, a grant of non-revenue-producing lands, or any other arrangement consistent with the Congressional Budget Act. The value of such payments would be capped at 7 percent of the net proceeds from the sale of Elk Hills. With total proceeds from that sale projected at $1.5 billion, we estimate that this provision would authorize a payment or land grant valued at up to $105 million. Although we cannot predict what form such a settlement would take, we assume that any appropriation resulting from court rulings would be unlikely to occur before 1998.

TABLE 5.—BUDGETARY IMPACT OF THE RECONCILIATION PROPOSAL OF SELLING THE NAVAL PETROLEUM RESERVES

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000	2001	2002
RECEIPTS FROM ASSET SALE [1]								
Proceeds from the sale:								
Estimated budget authority	0	0	−1,550	0	0	0	0	0
Estimated outlays	0	0	−1,550	0	0	0	0	0
DIRECT SPENDING								
Receipts under current law:								
Estimated budget authority	−433	−450	−477	−470	−445	−424	−401	−379
Estimated outlays	−433	−450	−477	−470	−445	−424	−401	−379
Proposed changes:								
Estimated budget authority	0	0	351	470	445	424	401	379
Estimated outlays	0	0	351	470	445	424	401	379
Receipts under proposal:								
Estimated budget authority	−433	−450	−126	0	0	0	0	0
Estimated outlays	−433	−450	−126	0	0	0	0	0
SPENDING SUBJECT TO APPROPRIATIONS ACTION								
Conduct of the sale:								
Authorization level	0	6	0	0	0	0	0	0
Estimated outlays	0	5	1	0	0	0	0	0
Payment of possible claims: [2]								
Estimated authorization level	0	0	0	105	0	0	0	0
Estimated outlays	0	0	0	105	0	0	0	0

[1] Under the 1996 budget resolution, proceeds from asset sales are counted in the budget totals for purposes of Congressional scoring. Under the Balanced Budget Act, however, proceeds from asset sales are not counted in determining compliance with the discretionary spending limits or pay-as-you-go requirement.

[2] This authorization is contingent upon administrative and Congressional actions that cannot be predicted by CBO. However, it is unlikely that any appropriation or grant would occur before fiscal year 1998.

Department of Commerce. CBO estimates that this subtitle would increase direct spending, result in new asset sale receipts, and provide new authorizations of appropriations. Several agencies or programs that are not currently authorized would be reauthorized by this subtitle, including NOAA and agencies that would be consolidated into the proposed U.S. Trade Administration [USTA]. The costs of continuing these programs are shown in table 6 as proposed changes—relative to authorizations under current law—in spending subject to appropriations action. As indicated by the estimated authorization levels shown at the bottom of table 8, we estimate that appropriations would initially decline by about $1.6 billion from the 1995 level, assuming that 1996 appropriations are reduced to be consistent with the new authorization amounts. An additional decline of about $.1 billion would occur over the 1997–2002 period.

Under this bill, abolishing the Department of Commerce would result in the elimination of between 1,500 and 2,000 employee positions. Some of those employee terminations would be immediate and, in the absence of appropriations for those purposes, would trigger new direct spending to cover severance pay, accrued annual leave, and other termination expenses. Some additional costs to phase out or reduce staff levels within the department would be paid out of discretionary appropriations over the next several years.

TABLE 6.—BUDGETARY IMPACT OF THE RECONCILIATION PROPOSAL OF ABOLISHING THE DEPARTMENT OF COMMERCE

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000	2001	2002
DIRECT SPENDING [1]								
Estimated budget authority	....	216	115	121	....	....	....	....
Estimated outlays	....	92	94	138	84	43	....	....
RECEIPTS FROM ASSET SALE [2]								
Estimated budget authority	....	6	−13	....	....	....	....	....
Estimated outlays	....	6	−13	....	....	....	....	....
SPENDING SUBJECT TO APPROPRIATIONS ACTION								
Spending under current law:								
Authorization level [3]	4,227	907	745	718	719	707	705	705
Estimated outlays	3,684	2,391	1,638	1,144	806	699	669	669
Proposed changes:								
Estimated authorization level	....	1,726	1,832	1,858	1,856	1,868	1,870	1,870
Estimated outlays	....	1,049	1,601	1,725	1,838	1,853	1,865	1,867
Projected spending under proposal:								
Estimated authorization level [3]	4,227	2,633	2,577	2.577	2,575	2,575	2,575	2,575
Estimated outlays	3,684	3,440	3,240	2,869	2,644	2,552	2,534	2,536

[1] The House Committee on the Judiciary recommended extending the PTO's surcharge fees through 2002 for reconciliation. If the recommendations of both the Judiciary Committee and the Commerce Committee were to be included in the reconciliation bill, then the direct spending for the Commerce Committee would increase by $476 million in budget authority and $347 million in outlays over the 1999–2002 period.

[2] Under the 1996 budget resolution, proceeds from asset sales re counted in the budget totals for purposes of Congressional scoring. Under the Balanced Budget Act, however, proceeds from asset sales are not counted in determining compliance with the discretionary spending limits or pay-as-you-go requirement.

[3] The 1995 level is the amount appropriated for that year.

Direct Spending from Abolishing the Department of Commerce. Enacting this subtitle would result in direct spending outlays of about $451 million over fiscal years 1996 through 2002. Most of this estimated increase would result from the bill's proposal to allow direct spending of fees collected by the Patent and Trademark Office [PTO]. Other mandatory costs would derive from eliminating employees associated with agencies that are abolished, along with any reductions-in-force that occur.

The subtitle would transfer residual and unappropriated balances of the PTO surcharge fund to the office and would authorize the PTO to spend any further receipts from the surcharge fund without an appropriation. CBO estimates that spending from the transferred balances and new direct spending from surcharge receipts would increase outlays of the Federal Government by about $405 million over the 1996–2002 period.

The subtitle also would authorize the PTO to borrow from the U.S. Treasury, but the committee's language would cap that authority at only $2 million. CBO would expect any significant budgetary impact if the PTO were to exercise this very small amount of borrowing authority. However, if the PTO were allowed to borrow more than $2 million, CBO would estimate greater direct spending effects.

CBO estimates that the direct costs resulting from the immediate elimination of certain agencies and programs would be about $45 million in fiscal year 1996. These estimated costs would arise from the government's obligation to provide Federal employees with a 60-day notification of termination, severance pay, payments for annual leave balances, and for other necessary costs to close an agency.

CBO does not estimate a cost to the civilian retirement system resulting from the elimination of positions at the Department of Commerce. Although some of the employees who lose their jobs will be eligible for retirement, CBO assumes that some of these individuals find work elsewhere in the Federal Government. Others will retire, but not so many as to exceed the CBO's baseline for the number of retirements resulting from downsizing.

Department of Commerce Asset Sales. This subtitle would authorize the sale of certain assets including the NIST and NTIA laboratories and the National Technical Information Service [NTIS]. CBO estimates that the sale of these assets would yield about $13 million in asset sale receipts, all of which would result from the sale of NTIS. In estimating the proceeds from the sale of NTIS, CBO examined such factors as the increasing availability of Federal documents over the internet and the efficiency savings that might result if a private firm owned NTIS.

At this time, CBO does not have enough information to determine if the NTIA laboratory could be sold and what its market value might be. Also, CBO believes that it is unlikely that the U.S. Trade Administration would be able to find a buyer for the NIST laboratories within the allotted 18 months. The subtitle would require the USTA to find buyer for NIST that would perform essentially the same functions (basic research to develop measurements and standards) as the agency does now. It seems unlikely that there would be much of a private market for such services.

Finally, this subtitle directs the Secretary of the Treasury to sell the loan portfolio of the Economic Development Administration. CBO expects these loan asset sales to result in a cost of $6 million, consistent with the treatment of loan modifications under the Credit Reform Act of 1990. Under those provisions, changes in the cost of loans are recorded on a present value basis in the year that such loan modifications are made. Selling loan assets would constitute a modification of the loans sold because the expected stream of future loan repayments would be replaced by the sale proceeds in the year of such a sale.

The average maturity date for EDA's outstanding loans is 2002. Many loans in the portfolio, however, are delinquent. CBO expects that—in total—the outstanding loans would be sold for less than their current discounted value to the Federal Government, because potential buyers would discount the expected receipts of scheduled loan repayments at a higher rate than the rate of Treasury borrowing for a comparable term.

Authorizations of Appropriations. This subtitle also would create a Commerce Programs Resolutions Agency that would handle any administrative functions necessary as the Department of Commerce is dismantled. The agency would exist for 3 years after the enactment of this subtitle, after which it, along with all of its functions, would be abolished. Specifically, it would be responsible for attempting to sell the laboratories and other properties of the NTIA and NTIS, and completing any other activities necessary to close down or transfer agencies and programs of the Department of Commerce, including disbursing grants previously obligated by former agencies. CBO estimates that these functions would cost the Federal Government about $12 million for fiscal years 1996 through 1998.

The bill would create a U.S. Trade Administration, which would be responsible for conducting trade negotiations and advising the President on international trade policy, and would transfer to the new agency the USTR, the Bureau of Export Administration [BEA], and most of NTIA, NIST, and the International Trade Administration [ITA]. The subtitle authorizes appropriations of such sums as are necessary for the new agency. Assuming continued appropriations at the 1995 levels, CBO estimates that the government would spend about $4.2 billion over the 1996–2002 period for the USTA.

Finally, this subtitle would transfer the Bureau of the Census, the Bureau of Economic and Statistical Analysis, and the statistical management functions of OMB to a new Federal Statistics Agency, and would authorize appropriations of such sums as may be necessary for the new agency. Assuming continued appropriations at the 1995 levels, CBO estimates that the Federal Statistics Agency would incur costs of about $2.2 billion over the 1996–2002 period.

In total, assuming appropriations of the authorized amounts, CBO estimates that the Federal Government would spend about $20 billion over the 1996–2002 period for the three new agencies as well as other programs authorized under this subtitle. By comparison, keeping the Department of Commerce in its current form and continuing its current level of funding would result in discretionary spending of $29 billion over the same period.

FCC Authorization. Subtitle A also would authorize appropriations of $186 million for the FCC in fiscal year 1996. Assuming appropriations of the authorized amounts, CBO estimates that this authorization would result in costs to the Federal Government of about $186 million over the 1996–97 period, primarily for salaries and expenses of the FCC. This estimate is displayed in table 7.

TABLE 7.—BUDGETARY IMPACT OF THE RECONCILIATION PROPOSAL ON FCC AUTHORIZATION

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000	2001	2002
SPENDING SUBJECT TO APPROPRIATIONS ACTION								
Spending under current law:								
Authorization level [1]	185	....	....	....	....	....	....	....
Estimated outlays	184	11	....	....	....	....	....	....
Proposed changes:								
Authorization level	....	186	....	....	....	....	....	....
Estimated outlays	....	175	11	....	....	....	....	....
Spending under proposal:								
Authorization level [1]	185	186	....	....	....	....	....	....
Estimated outlays	184	186	11	....	....	....	....	....

[1] The 1995 level is the amount appropriated for that year.

Waste Isolation Pilot Project [WIPP]. CBO estimates that subtitle D could save $113 million in outlays that are subject to appropriations over the 1996–2002 period. Opening the WIPP facility earlier would result in both costs and savings. The legislation would advance scheduled payments of $20 million annually to the State of New Mexico by 2 years. Under current law, the first payment is scheduled for 1998. According to DOE, opening the WIPP facility sooner would raise by $30 million the near-term cost of complying with current laws and other operational activities. The bill would exempt WIPP from the land disposal restrictions for wastes that are also covered by a performance assessment required by other regulations. According to DOE, the exemption would lead to savings of at least $5 million over the 1996–2002 period, depending on the conditions imposed by the Environmental Protection Agency. The legislation would also allow DOE to begin operations earlier, as the 6-month waiting period after DOE notification to Congress of full environmental compliance would be eliminated. Based on information provided by DOE, CBO estimates that eliminating the requirement for full environmental compliance would save approximately $140 million over the 1996–2002 period. The modification of various reporting requirements would save approximately $1 million annually. The legislation also would give DOE the option of using engineered or natural barriers as necessary to isolate the transuranic waste in contrast to current law that requires their use. This change would save at least $3 million annually over the 1997–2002 period.

TABLE 8.—BUDGETARY IMPACT OF THE RECONCILIATION PROPOSAL ON THE WASTE ISOLATION PILOT PROGRAM

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000	2001	2002
SPENDING SUBJECT TO APPROPRIATIONS ACTION								
Spending under current law:								
Estimated budget authority	335	345	355	366	377	388	400	412
Estimated outlays	330	340	350	361	382	383	394	406
Proposed changes:								
Estimated budget authority	....	30	20	−149	−4	−4	−4	−4
Estimated outlays	....	18	22	−80	−49	−16	−4	−4

TABLE 8.—BUDGETARY IMPACT OF THE RECONCILIATION PROPOSAL ON THE WASTE ISOLATION PILOT PROGRAM—Continued

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000	2001	2002
Spending under proposal:								
Estimated budget authority	335	375	375	217	373	384	396	408
Estimated outlays	330	358	372	281	323	367	390	402

7. Estimated cost to State and local governments: CBO estimates that a number of provisions of the House Commerce Committee's reconciliation recommendations relating to abolishing the Department of Commerce would have a direct impact on State and local governments. The major grant programs being eliminated are discussed below. First, the subtitle would abolish eleven National Oceanic and Atmospheric Administration programs that provide research funds or grants to State governments and universities. The fiscal year 1995 funding for these programs was approximately $26 million. In addition, four programs jointly administered between the Federal Government and universities would be abolished.

Second, the subtitle would abolish the Economic Development Administration. This administration provides public works grants, other financial assistance, and planning and coordination assistance to economically distressed areas and regions of the country. These programs, which were funded at a level totaling $418 million in fiscal year 1995, are generally administered by State or local development agencies.

Third, the subtitle would abolish the Information Infrastructure Grants Program and the Public Telecommunications Facilities Program in the National Telecommunications and Information Administration [NTIA]. Funding for these programs was $64 million and $29 million in fiscal year 1995, respectively. A significant portion of these funds was allocated to public institutions, including universities and colleges.

Finally, the subtitle would abolish the State Technology Extension Program and the Manufacturing Extension Centers Program in the National Institute of Standards and Technology. The State Technology Extension Program provides planning grants to States to develop or revitalize their technology programs. The fiscal year 1995 funding for this program was $6 million.

The Manufacturing Extension Centers Program was developed to enhance productivity and technological performance in the United States. It involves cooperative agreements between the Federal Government and nonprofit institutions that are often funded by State or local development agencies or universities. These agreements can last up to 6 years and provide up to 50 percent funding for the manufacturing centers in the first 3 years and a declining percentage in subsequent years. Thus, the elimination of Federal funding might result in the need for additional State or local funding. The fiscal year 1995 funding for this program was $69 million.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by:

Federal Cost Estimate: Spectrum Auctions: Rachel Forward, David Moore; NRC, Kim Cawley; USEC, NPR, Kathleen Gramp;

WIPP, Elizabeth Chambers; Department of Commerce: Rachel Robertson, Rachel Forward, Gary Brown.

State and Local Estimate: Marc Nicole.

12. Estimate approved by: Robert A. Sunshine, Paul N. Van de Water, for Assistant Director for Budget Analysis.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Subcommittee on Commerce, Trade, and Hazardous Materials and the Subcommittee on Telecommunications and Finance held oversight and legislative hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the committee by the Committee on Government Reform and Oversight.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the committee finds that subtitle F would have no inflationary impact.

MISCELLANEOUS HOUSE REPORT REQUIREMENTS

BUDGET COMMITTEE ESTIMATES

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the committee of the cost which would be incurred in carrying out the Seven-Year Balanced Budget Reconciliation Act of 1995. However clause 7(d) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act.

MISCELLANEOUS BUDGETARY INFORMATION

Section 308(a)(1) of the Congressional Budget and Impoundment Control Act of 1974 and clause 26 of rule XI of the Rules of the House require the report to include a statement identifying various budgetary information. The bill provides for a gross increase of new budget authority of $693 million in fiscal year 1996, $6.027 billion over the next 5 years, and $7.523 billion over the next 7 years. It should be noted that any gross increase in new budget authority is greatly offset by gross decreases in new budget authority. There is a gross increase in revenue of $3.068 billion in fiscal year 1996, $23.530 billion over the next 5 years, and $37.471 billion over 7 years. However, the bill contains gross decreases in revenues of $3.266 billion in fiscal year 1996, $13.125 billion over the next 5 years, and $15.687 billion over the next 7 years. The net effect on revenues of this bill (as reported from committee) is a decrease of $0.198 billion in fiscal year 1996, an increase of $10.405 billion over the next 5 years, and an increase of $21.784 billion over the next 7 years. Nevertheless, this bill will include tax cuts of $245 billion over 7 years before it reaches the floor of the House.

INFLATION IMPACT STATEMENT

Clause 2(l)(4) of rule XI requires each committee report on a bill or joint resolution of a public character to include an analytical statement describing what impact enactment of the measure would have on prices and costs in the operation of the national economy. This bill will have no inflationary impact on prices and costs in the operation of the national economy.

BUDGET COMMITTEE OVERSIGHT FINDINGS

Clause 2(l)(3)(A) of rule XI requires each committee report to contain oversight findings and recommendations required pursuant to clause (2)(b)(1) of rule X. The committee has no oversight findings.

Oversight Findings and Recommendations of the Committee on Government Reform and Oversight

Clause 2(l)(3)(D) of rule XI requires each committee report to contain a summary of oversight findings and recommendations made by the Government Reform and Oversight Committee pursuant to clause 4(c)(2) of rule X, whenever such findings have been timely submitted. The Committee on Budget has received no such findings or recommendations from the Committee on Government Reform and Oversight.

Statement on Federal Mandates

Beginning January 1, 1996, congressional committees will be required to include in reports a statement regarding the Federal mandates contained in bills or resolutions.

Contained in this bill is a dramatic devolution of government programs from distant bureaucracies in Washington, DC, back to the State and local governments that are closer to and more accountable to the people these programs are intended to serve. The number of federally controlled programs has proliferated over the years, to the point where for a given need there are a multitude of different Federal programs, each with its own set of onerous rules and regulations. The devolution contained within this bill will provide State and local governments with greatly increased flexibility, by greatly decreasing burdensome Federal mandates.

Committee Votes

Clause 2(l)(2)(B) of House rule XI requires each committee report to accompany any bill or resolution of a public character, ordered to include the total number of votes cast for and against on each rollcall vote on a motion to report and any amendment offered to the measure or matter, together with the names of those voting for and against. Below are the results of the rollcall votes taken in the Budget Committee on this resolution:

On October 12, 1995, the committee met in open session, a quorum being present, and ordered reported the bill, the Seven-Year Balanced Budget Reconciliation Act of 1995.

The following votes were taken by the committee:

1. Mr. Sabo moved that the Committee on the Budget postpone further consideration of the 1995 reconciliation bill until Wednesday, October 18, in order to provide additional time to receive submissions from those committees that have not yet responded to the reconciliation directives adopted by the House of Representatives in House Concurrent Resolution 67, the concurrent resolution on the budget for fiscal year 1996 through 2002. The motion failed by a rollcall vote of 15 ayes and 23 noes.

Member	Aye	No	Member	Aye	No
Mr. Kasich, Chairman		X	Mr. Sabo	X	
Mr. Hobson		X	Mr. Stenholm	X	
Mr. Walker			Mrs. Slaughter	X	
Mr. Kolbe		X	Mr. Parker		X
Mr. Shays		X	Mr. Coyne	X	
Mr. Herger		X	Mr. Mollohan		
Mr. Bunning		X	Mr. Costello	X	

Member	Aye	No	Member	Aye	No
Mr. Smith of Texas		X	Mr. Johnston	X	
Mr. Allard		X	Mrs. Mink	X	
Mr. Miller		X	Mr. Orton	X	
Mr. Lazio		X	Mr. Pomeroy	X	
Mr. Franks		X	Mr. Browder	X	
Mr. Smith of Michigan		X	Ms. Woolsey	X	
Mr. Inglis		X	Mr. Olver		
Mr. Hoke		X	Ms. Roybal-Allard	X	
Ms. Molinari		X	Mrs. Meek	X	
Mr. Nussle		X	Ms. Rivers	X	
Mr. Hoekstra		X	Mr. Doggett	X	
Mr. Largent		X			
Mrs. Myrick		X			
Mr. Brownback		X			
Mr. Shadegg					
Mr. Radanovich		X			
Mr. Bass		X			

2. Mr. Hobson moved that the committee order reported with a favorable recommendation the text of the Seven-Year Budget Reconciliation Act of 1995, and pursuant to rule XX, clause 1 of the Rules of the House, authorize the chairman to offer a motion to go to conference. The motion was agreed to by a rollcall vote of 24 ayes and 16 noes.

Member	Aye	No	Member	Aye	No
Mr. Kasich, Chairman	X		Mr. Sabo		X
Mr. Hobson	X		Mr. Stenholm		X
Mr. Walker			Mrs. Slaughter		X
Mr. Kolbe	X		Mr. Parker	X	
Mr. Shays	X		Mr. Coyne		X
Mr. Herger	X		Mr. Mollohan		
Mr. Bunning	X		Mr. Costello		X
Mr. Smith of Texas	X		Mr. Johnston		X
Mr. Allard	X		Mrs. Mink		X
Mr. Miller	X		Mr. Orton		X
Mr. Lazio	X		Mr. Pomeroy		X
Mr. Franks	X		Mr. Browder		X
Mr. Smith of Michigan	X		Ms. Woolsey		X
Mr. Inglis	X		Mr. Olver		X
Mr. Hoke	X		Ms. Roybal-Allard		X
Ms. Molinari	X		Mrs. Meek		X
Mr. Nussle	X		Ms. Rivers		X
Mr. Hoekstra	X		Mr. Doggett		X
Mr. Largent	X				
Mrs. Myrick	X				
Mr. Brownback	X				
Mr. Shadegg	X				
Mr. Radanovich	X				
Mr. Bass	X				

3. Mr. Sabo moved that:

(1) The chairman be directed to convene a business meeting of the Committee on the Budget not later than Wednesday, October 18, to consider recommending committee amendments to the Omnibus Budget Reconciliation Act of 1995;

(2) During the meeting called pursuant to paragraph (1), the first order of business shall be consideration of any amendments to the reconciliation bill proposed by the chairman, provided that the text of any such amendments is circulated to

members of the committee and made available to the public not less than 48 hours before the meeting;

(3) In the event the Committee on the Budget agrees to recommend amendments to the reconciliation bill, the chairman shall notify the Committee on Rules of the recommended amendments and shall request, on behalf of the Committee on the Budget, that the recommended amendments be made in order, either as original text or as amendments to be offered on the House floor. The motion failed by a rollcall vote of 15 ayes and 22 noes.

Member	Aye	No	Member	Aye	No
Mr. Kasich, Chairman		X	Mr. Sabo	X	
Mr. Hobson		X	Mr. Stenholm	X	
Mr. Walker			Mrs. Slaughter	X	
Mr. Kolbe		X	Mr. Parker		X
Mr. Shays		X	Mr. Coyne	X	
Mr. Herger		X	Mr. Mollohan		
Mr. Bunning		X	Mr. Costello	X	
Mr. Smith of Texas			Mr. Johnston		
Mr. Allard		X	Mrs. Mink	X	
Mr. Miller		X	Mr. Orton	X	
Mr. Lazio		X	Mr. Pomeroy	X	
Mr. Franks		X	Mr. Browder	X	
Mr. Smith of Michigan		X	Ms. Woolsey	X	
Mr. Inglis		X	Mr. Olver	X	
Mr. Hoke		X	Ms. Roybal-Allard	X	
Ms. Molinari		X	Mrs. Meek	X	
Mr. Nussle		X	Ms. Rivers	X	
Mr. Hoekstra		X	Mr. Doggett	X	
Mr. Largent		X			
Mrs. Myrick		X			
Mr. Brownback		X			
Mr. Shadegg					
Mr. Radanovich		X			
Mr. Bass		X			

4. Ms. Rivers moved that the Committee on the Budget direct its chairman to request, on behalf of the committee, that the rule for consideration of the Omnibus Budget Reconciliation Act of 1995 provide a full opportunity for Members of the House of Representatives to offer amendments to any title or section of the reconciliation bill, as made in order for consideration in the Committee of the Whole, that has not been considered and approved by the appropriate committee or committees of the House of Representatives. The motion failed by a rollcall vote of 15 ayes and 23 noes.

Member	Aye	No	Member	Aye	No
Mr. Kasich, Chairman		X	Mr. Sabo	X	
Mr. Hobson		X	Mr. Stenholm	X	
Mr. Walker			Mrs. Slaughter	X	
Mr. Kolbe		X	Mr. Parker		X
Mr. Shays		X	Mr. Coyne	X	
Mr. Herger		X	Mr. Mollohan		
Mr. Bunning		X	Mr. Costello	X	
Mr. Smith of Texas		X	Mr. Johnston		
Mr. Allard		X	Mrs. Mink	X	
Mr. Miller		X	Mr. Orton	X	
Mr. Lazio		X	Mr. Pomeroy	X	
Mr. Franks		X	Mr. Browder	X	
Mr. Smith of Michigan		X	Ms. Woolsey	X	
Mr. Inglis		X	Mr. Olver	X	

Member	Aye	No	Member	Aye	No
Mr. Hoke			Ms. Roybal-Allard	X	
Ms. Molinari		X	Mrs. Meek	X	
Mr. Nussle		X	Ms. Rivers	X	
Mr. Hoekstra		X	Mr. Doggett	X	
Mr. Largent		X			
Mrs. Myrick		X			
Mr. Brownback		X			
Mr. Shadegg		X			
Mr. Radanovich		X			
Mr. Bass		X			

5. Mrs. Meek moved that the chairman be directed to seek a rule for consideration of the fiscal year 1996 reconciliation bill that makes in order an amendment that substitutes the formula passed by the Senate's Committee on Finance for the formula passed by the House of Representatives' Committee on Commerce for allocating the Medicaid block grants to the States. The motion failed by a rollcall vote of 8 ayes and 28 noes.

Member	Aye	No	Member	Aye	No
Mr. Kasich, Chairman		X	Mr. Sabo	X	
Mr. Hobson		X	Mr. Stenholm		X
Mr. Walker			Mrs. Slaughter	X	
Mr. Kolbe		X	Mr. Parker		X
Mr. Shays		X	Mr. Coyne	X	
Mr. Herger		X	Mr. Mollohan		
Mr. Bunning			Mr. Costello		
Mr. Smith of Texas		X	Mr. Johnston		
Mr. Allard		X	Mrs. Mink	X	
Mr. Miller		X	Mr. Orton	X	
Mr. Lazio		X	Mr. Pomeroy		X
Mr. Franks		X	Mr. Browder		X
Mr. Smith of Michigan		X	Ms. Woolsey	X	
Mr. Inglis		X	Mr. Olver		X
Mr. Hoke		X	Ms. Roybal-Allard	X	
Ms. Molinari		X	Mrs. Meek	X	
Mr. Nussle		X	Ms. Rivers		X
Mr. Hoekstra		X	Mr. Doggett		X
Mr. Largent		X			
Mrs. Myrick		X			
Mr. Brownback		X			
Mr. Shadegg		X			
Mr. Radanovich					
Mr. Bass		X			

6. Ms. Woolsey moved that the Committee on the Budget direct its chairman to request, on behalf of the committee, that the rule for consideration of the Omnibus Budget Reconciliation Act of 1995 make in order an amendment striking any cuts in student loans and striking any repeal or alteration of the corporate alternative minimum tax that may be included in the legislation brought before the House. The motion failed on a voice vote.

7. Mr. Stenholm moved that the Committee on the Budget direct its chairman to request, on behalf of the committee, that the rule for consideration of the Omnibus Budget Reconciliation Act of 1995 make in order an amendment to be offered by Mr. Browder, Mr. Orton, and Mr. Stenholm, or their designee, bringing the Federal budget into balance by the year 2002 while postponing tax cuts until a balanced budget has been achieved. The motion failed by a rollcall vote of 15 ayes and 23 noes.

Member	Aye	No	Member	Aye	No
Mr. Kasich, Chairman		X	Mr. Sabo	X	
Mr. Hobson		X	Mr. Stenholm	X	
Mr. Walker			Mrs. Slaughter		
Mr. Kolbe		X	Mr. Parker		X
Mr. Shays		X	Mr. Coyne	X	
Mr. Herger		X	Mr. Mollohan		
Mr. Bunning			Mr. Costello	X	
Mr. Smith of Texas		X	Mr. Johnston	X	
Mr. Allard		X	Mrs. Mink	X	
Mr. Miller		X	Mr. Orton	X	
Mr. Lazio		X	Mr. Pomeroy	X	
Mr. Franks		X	Mr. Browder	X	
Mr. Smith of Michigan		X	Ms. Woolsey	X	
Mr. Inglis		X	Mr. Olver	X	
Mr. Hoke		X	Ms. Roybal-Allard	X	
Ms. Molinari		X	Mrs. Meek	X	
Mr. Nussle		X	Ms. Rivers	X	
Mr. Hoekstra		X	Mr. Doggett	X	
Mr. Largent		X			
Mrs. Myrick		X			
Mr. Brownback		X			
Mr. Shadegg		X			
Mr. Radanovich		X			
Mr. Bass		X			

8. Mr. Pomeroy moved that the Committee on the Budget direct its chairman to request, on behalf of the committee, that the rule for consideration of the Omnibus Budget Reconciliation Act of 1995 provide for an amendment to restore current law protections which protect spouses of nursing home residents from utter impoverishment and welfare dependence. The motion was withdrawn.

9. Mr. Pomeroy moved that the Committee on the Budget direct its chairman to request, on behalf of the committee, that the rule for consideration of the Omnibus Budget Reconciliation Act of 1995 provide for an amendment to delete the provision reported by the Ways and Means Committee that suspends the penalty excise tax for corporations that withdraw employee pension funds for purposes other than to pay for retiree benefits. The motion was tabled by a rollcall vote of 21 ayes and 15 noes.

Member	Aye	No	Member	Aye	No
Mr. Kasich, Chairman	X		Mr. Sabo		X
Mr. Hobson	X		Mr. Stenholm		X
Mr. Walker	X		Mrs. Slaughter		X
Mr. Kolbe	X		Mr. Parker	X	
Mr. Shays	X		Mr. Coyne		X
Mr. Herger	X		Mr. Mollohan		
Mr. Bunning			Mr. Costello		X
Mr. Smith of Texas			Mr. Johnston		
Mr. Allard	X		Mrs. Mink		X
Mr. Miller	X		Mr. Orton		X
Mr. Lazio	X		Mr. Pomeroy		X
Mr. Franks	X		Mr. Browder		X
Mr. Smith of Michigan	X		Ms. Woolsey		X
Mr. Inglis	X		Mr. Olver		X
Mr. Hoke	X		Ms. Roybal-Allard		X
Ms. Molinari	X		Mrs. Meek		X
Mr. Nussle	X		Ms. Rivers		X
Mr. Hoekstra	X		Mr. Doggett		X
Mr. Largent	X				
Mrs. Myrick	X				
Mr. Brownback					

Member	Aye	No	Member	Aye	No
Mr. Shadegg					
Mr. Radanovich	X				
Mr. Bass	X				

Views of Committee Members

Clause (2)(l)(5) of rule XI requires each committee to afford a 3-day opportunity for members of the committee to file additional minority, or dissenting views and to include the view in its report. The views submitted are found at the end of this report.

MINORITY, ADDITIONAL, AND DISSENTING VIEWS

MINORITY, ADDITIONAL, AND DISSENTING VIEWS TO TITLE II

ADDITIONAL VIEWS OF HON. ROBERT W. NEY

As a member of the Committee on Banking and Financial Services, I would like to offer my views to be included in the final report in order to clarify my support of amendment No. 26, section 2226(c) and 2243(c) offered by Congressman Stockman. This amendment essentially overturns an amendment to the Riegel-Neal Interstate Banking and Branching Efficiency Act of 1994 (Public Law 103–328) which effectively overruled an appellate court decision upholding congressional intent and Federal regulatory determinations regarding availability of limited types of home equity lending. Although I was unable to be present for the vote, I would like to be added to the record as a member in strong support of this amendment.

Respectfully submitted,

ROBERT W. NEY.

ADDITIONAL VIEWS OF HON. MAURICE D. HINCHEY

While I understand the need to modify programs under the committee's jurisdiction in order to meet the savings levels targeted in the budget resolution, I want to express my concern about the actions taken in regard to the Community Reinvestment Act [CRA]. The broad exemptions, self-certifications, and "safe harbor" provisions have no place in this type of legislation. This is clearly an attack on CRA that attempts to skirt the traditional legislative through using the procedural protections afforded by the reconciliation process.

The 7-year savings realized by these CRA provisions are estimated by the Congressional Budget Office to total $21 million. However, the committee print altogether has scored almost $450 million above the level required by the budget resolution. Even if the CRA provisions were eliminated, the committee would save almost $430 million over the required amount. I think it is unfortunate that Congressman Kennedy's amendment to strike the CRA provisions from the bill was defeated by a slim margin.

Gutting CRA will hurt low- and middle-income people across the Nation, in rural and urban areas, by encouraging banks to filter deposits from their communities. Credit availability will be reduced greatly as a result. In New York State alone, which has received an estimated $2.3 billion in credit due to the CRA, I expect credit availability to suffer dramatically if this is enacted.

I would also like to explain my absence from several votes taken by the committee during consideration of this measure. Due to scheduling conflicts with the Resources Committee, which held its reconciliation markup concurrently, I was unable to be present for all of the votes in both committees. I made every effort to run back and forth from the two sessions, but unfortunately I was not able to be present for all of the votes.

MAURICE D. HINCHEY.

MINORITY, ADDITIONAL, AND DISSENTING VIEWS TO TITLE III

MINORITY VIEWS—SPECTRUM

We are ambivalent about the telecommunications provisions of the reconciliation legislation. Several provisions, in our view, improve current law, and we commend the majority for making these important changes. In the main, the majority fulfilled its reconciliation instructions while doing minimal damage to sound telecommunications policy and to spectrum users.

However, we object vigorously to the notion that the radio spectrum is a bottomless drawer that can disgorge billions of dollars whenever the House Republican leadership runs short of cash.

Perhaps the time has come for our committee to transfer responsibility for telecommunications policy from the Federal Communications Commission [FCC] to the Bureau of Engraving and Printing. Because in the House Budget Committee's latest search for ways to balance the Federal budget and fund a tax cut, the FCC has been transformed into the Government's very own bank.

The majority should recognize that moving around spectrum users—at enormous expense, and with substantial disruption—is an indirect form of taxation. The revenues generated by instructing the Commission to conduct additional auctions may seem like found money. It is not. It will cause real companies to spend real money. The Republican majority should be aware that they are imposing significant costs on American businesses.

In the Omnibus Budget Reconciliation Act of 1993, we authorized the Commission to use competitive bidding to assign licenses to use the radio spectrum. We believed then, and still believe, that this is a prudent mechanism for differentiating between mutually exclusive applications for the same spectrum license. That policy was intended to end the Commission's failed experience with lotteries, while promoting the efficient use of the radio spectrum and speeding the introduction of innovative new telecommunications services to the market. It has proven to be very successful, as demonstrated by the recent PCS auctions.

In 1993, however, we were careful not to tamper with the Commission's process of allocating spectrum. Competitive bidding was intended to be, and should remain, simply a method of differentiating among competing applicants for the same license. It certainly was not intended to transform the process of assigning all radio spectrum into a commodities market.

Furthermore, we made it clear in 1993 that the Commission should not base an allocation decision on the expectation of deriving more revenue through the competitive bidding process. We said that the Commission should make its decisions based on sound communications policy pursuant to the Communications Act, and not budgetary considerations.

The committee reaffirmed these decisions. It made statutory changes to highlight the Commission's obligations to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means to avoid mutual exclusivity among licenses. In our view, this is a responsible change. Similarly, the committee's decision to extend competitive bidding authority for an additional 4 years was also responsible.

However, it is simply irresponsible to craft telecommunications policy and enact laws based solely on the needs of the Republican leadership to fund a tax cut, or to generate revenues for the U.S. Treasury.

Moreover, making spectrum use decisions based on the willingness of the Congressional Budget Office to score each megahertz with a specific dollar value perverts an already bad process, and results in mediocre—at best—spectrum policies. CBO's scoring has the effect of dictating the amount of spectrum that must be auctioned. Yet the so-called model that CBO utilizes is simplistic and unidimensional. It fails to recognize that spectrum is used by hundreds of thousands of American businesses to achieve otherwise unobtainable efficiencies. The committee's dependence on achieving a satisfactory CBO score—no matter how flawed—imposes an indirect tax on unsuspecting spectrum users. We are confident that they will make their views known to the majority.

Perhaps the most irresponsible aspect of this bill stems from the majority's need to meet a budget reconciliation shortfall in another area. It was not clear what caused the shortfall—we were variously informed that it concerned the naval petroleum reserve or Food and Drug Administration user fees. The majority determined that it would exceed the $14.4 billion that the Budget Committee had assigned to be generated from spectrum auctions by requiring the National Telecommunications and Information Administration [NTIA] to transfer an additional 20 mHz of federally controlled spectrum to the Commission for public auction.

No inquiry or analysis was performed to determine where this spectrum would come from, or what the cost would be to relocate incumbent users.

It is true that in the 1993 budget bill, Congress directed NTIA to transfer at least 200 mHz of Federal Government spectrum to the Commission. That action followed 5 years of hearings in both the House and the Senate, and extensive discussion with spectrum managers at NTIA.

In its report to Congress pursuant to that act, NTIA identified 235 mHz of spectrum for transfer at a cost of $477 to $592 million to relocate existing Federal users to new frequencies. That relocation cost is borne by the Federal agency that must be moved, and ultimately by the taxpayers.

That 235 mHz of spectrum identified by NTIA had the lowest possible relocation cost. The next 20 mHz will necessarily cost more. The largest Government user of spectrum under 3 gHz is the Defense Department, and an estimate of the relocation cost to defense users actually exceeds the value of the spectrum on the open market. The added potential cost to public safety and national security has not even been addressed.

The legislation further requires that if the Commission is unable to identify the entire 100 mHz for auction on its own, the NTIA must kick in the remainder. This mandate will not only be difficult to carry out due to the existing congestion in the radio spectrum below 3 gHz, but also will be devastating to the Government given the tremendous relocation costs that would be incurred. The toll on critical public services, such as national defense, law enforcement, and air traffic control, could pose an even greater threat.

The dangers of budget-driven policymaking are real. Unfortunately, they often go unnoticed until disaster strikes. If the majority persists in treating spectrum licenses like penalty-free certificates of deposit, they run a very real risk of endangering communications that guide jumbo jets and maintain our defense systems.

Radio spectrum is a vital national resource that is critical to protecting the public welfare, providing for public safety needs, and making American business more productive and efficient. Competitive bidding is a useful device to differentiate among competing applicants for the same license. But the bidding process should not be treated like a friendly banker, ever prepared to cough up whatever money is needed in any given year. Given the shortcomings inherent in crafting spectrum policies in the context of the budget process, the committee's majority has in most respects acted responsibly. However, its decision to require the Federal Government to vacate an additional 20 mHz of spectrum to cover a shortfall in another area is patently irresponsible, and will prove to cost far more to implement than projected by CBO's flawed cost estimates.

JOHN D. DINGELL.
HENRY A. WAXMAN.
EDWARD J. MARKEY.
RON WYDEN.
JOHN BRYANT.
RICK BOUCHER.
THOMAS J. MANTON.
EDOLPHUS TOWNS.
GERRY E. STUDDS.
FRANK PALLONE.
SHERROD BROWN.
BLANCHE L. LINCOLN.
BART GORDON.
ELIZABETH FURSE.
PETER DEUTSCH.
BOBBY L. RUSH.
ANNA G. ESHOO.
RON KLINK.
BART STUPAK.

MINORITY VIEWS—RECONCILIATION—WIPP

The committee print amending the Waste Isolation Pilot Plant Land Withdrawal Amendment Act of 1992—WIPP Act—is both unnecessary and unwise. It substantially alters a law enacted less than 3 years ago, when changes have not been requested by either of the two Federal agencies responsible for the project or the State of New Mexico, where the facility is located.

The legislation achieves little in terms of accomplishing its stated goal—to speed up the date on which WIPP will begin accepting waste for disposal. Testimony from the Department of Energy [DOE] indicates that enactment of H.R. 1663, the basis of this provision, would advance WIPP's opening—now scheduled for June 1998—by only 9 months.

This paltry benefit comes at the expense of important environmental protections which DOE, the Environmental Protection Agency [EPA], and the General Accounting Office [GAO] all support. The legislation exempts WIPP from the land ban requirements under the Resource Recovery and Conservation Act, as well as from independent oversight by EPA. Both GAO and DOE testified that retaining these protections is critical to building public confidence in the facility—as well as DOE.

It is particularly disappointing that this committee would vote to do away with independent oversight of a DOE nuclear weapons facility. The Commerce Committee has a distinguished record of oversight, done on a bipartisan basis, documenting the problems associated with allowing DOE to escape the sort of routine oversight which applies to private industry. This is particularly true in the area of nuclear safety, as demonstrated by the problems experienced at the DOE weapons plants at Rocky Flats, Savannah River, Hanford, and Fernald. The committee's concern about DOE self-regulation has resulted in enactment of legislation to subject DOE to outside scrutiny and increase its accountability—the Price-Anderson Amendments Act of 1988, the Defense Nuclear Facilities Safety Oversight Board Act of 1989, the 1992 Federal Facility Compliance Act, and of course the 1992 WIPP Act.

The WIPP provisions agreed to in reconciliation run contrary to the reforms in which the Commerce Committee has previously taken the lead. Despite its initial resistance to outside scrutiny, DOE itself now strongly supports the concept of outside oversight. In exempting WIPP from key provisions of current law, the committee now sends a confusing signal to DOE, the State of New Mexico, and the public—not only in New Mexico but also in other States where DOE facilities are located—regarding its intentions. We can only hope that this is an isolated incident and that the committee will resume its prior effort to shake off the final vestiges of the cold war by making DOE fully accountable to the public and to the Congress.

JOHN D. DINGELL.
HENRY A. WAXMAN.
EDWARD J. MARKEY.
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JOHN BRYANT.
RICK BOUCHER.
THOMAS J. MANTON.
EDOLPHUS TOWNS.
GERRY E. STUDDS.
FRANK PALLONE, Jr.
SHERROD BROWN.

ELIZABETH FURSE.
PETER DEUTSCH.
ANNA G. ESHOO.
RON KLINK.
BART STUPAK.

MINORITY VIEWS—RECONCILIATION—NAVAL PETROLEUM RESERVES

The minority is not opposed philosophically to privatizing Federal assets, so long as public policy concerns, including obtaining fair value for the taxpayer, are fairly addressed. Unfortunately, the committee print directing the Department of Energy [DOE] to sell the naval petroleum reserves does not meet this test. It instead reflects the pressures of the majority's self-imposed budget targets, which have led to a plan that authorizes what could well become a fire sale.

The committee print includes several safeguards the Commerce Committee has adopted in prior legislation selling Federal assets. As in the case of privatizing Conrail, and in legislation to privatize the Government's uranium enrichment plants, the plan directs the responsible official—in this case, the Secretary of Energy—to engage outside financial advisors, to identify the best method of sale, and to establish an appropriate minimum price for the reserves.

However, the effect of these prudent steps is nearly wholly undercut by a fatal flaw in the committee print—the requirement that the reserves be sold by the end of calendar 1996. This deadline runs counter to the advice provided in testimony by both DOE and a private investment adviser. Both indicated that forcing the sale to occur on this timetable, which is driven solely by budget scoring concerns, is foolhardy and could depress the prices ultimately paid for these properties.

Specifically, the Department indicated that the bill's prescriptive provisions would lock it into a schedule that would not permit it the flexibility needed to properly prepare for the sale. It also warned that the 1996 deadline might prevent DOE from properly analyzing the various oil and gas fields, from conforming its accounting methods to commercial standards, and from pursuing an optimal marketing strategy. DOE noted that the administration supports selling the reserves and held out hope that the reserves could be sold in 1996. However, it strongly appealed for an additional year, or some other failsafe mechanism, in order to ensure that a premature sale did not result in depressed bids.

Similarly, the investment advisor—one of the country's foremost oil and gas acquisition specialists, who was invited by the majority—testified that an overly short deadline could reduce the sale price as potential purchasers discounted their bids to reflect uncertainties about the fields. This witness agreed with DOE that providing an additional year would be advisable.

Unfortunately, the majority did not support the amendment offered by Mr. Brown to build flexibility into the Department's timetable in the event the Secretary and Director of the Office of Management and Budget determined that a quick sale would cheat the taxpayer out of the full value of these assets.

Regrettably, the majority chose not to adopt an approach based on the committee's accrued experience in privatizing Federal assets. The elements of a sound and responsible transfer of Federal assets to private hands are not difficult to identify. The majority's rejection of a reasonable timetable, contrary to strong testimony, renders its overriding motives utterly transparent. It is akin to a breach of fiduciary duty by a family trustee who has sold off the family jewels in haste. The committee should not be party to efforts to produce apparent immediate relief for the Republican leadership's self-imposed time constraints at the expense of more responsible long-term stewardship of Federal assets on behalf of the taxpayer.

JOHN D. DINGELL.
HENRY A. WAXMAN.
ED MARKEY.
RON WYDEN.
JOHN BRYANT.
THOMAS J. MANTON.
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RON KLINK.
BART STUPAK.

MINORITY VIEWS—DEPARTMENT OF COMMERCE ELIMINATION

We strongly support streamlining the Government, finding ways to achieve efficiencies, and eliminating wasteful and unnecessary Federal spending.

Unfortunately, the reported bill neither cuts Government spending nor reduces bureaucracy. It shuffles boxes for the sake of a trophy hunt, but to the great detriment of programs and activities that create and preserve American jobs, promote the sale of American products and services around the world, allow for effective representation of U.S. interests in trade negotiations, provide domestic and international telecommunications policy and advocacy functions, stimulate new technologies that produce high-technology, high-wage jobs, and spur investments to benefit communities, the environment, and the economy.

The legislation is called the Department of Commerce Dismantling Act. Many other names could describe this ill-conceived and hastily-drafted legislation.

The bill could be called the Government Agency Creation and Proliferation Act of 1995. At least four new Federal entities are created by the bill:

(1) the Commerce Programs Resolution Agency, vested with broad authority to dispose of Department of Commerce [DOC]

programs, obligations, and functions—for which no funding is provided;

(2) the U.S. Trade Administration, which commingles existing functions of the U.S. Trade Representative [USTR], the Bureau of Export Administration, International Trade Administration, and National Institute of Science and Technology;

(3) the Federal Statistics Agency, which combines DOC's Bureaus of the Census and Economic Analysis; and

(4) the Patent and Trademark Office, a new "Government corporation."

Other committees considering this bill demonstrated the same propensity to create a plethora of new Federal entities. The Ways and Means Committee also created a new U.S. Trade Administration, but retained USTR and as a separate entity. The Science Committee created a new U.S. Science and Technology Administration, which may be the first step to a new Department of Science. The Transportation Committee created a new Office of Economic Development, combining the Appalachian Regional Commission with the Economic Development Administration [EDA]. The Resources Committee created the National Marine Resources Administration, a new independent agency housing most functions of the National Oceanic and Atmospheric Administration [NOAA].

This creation and proliferation of new Federal agencies, each with its own new bureaucracy and new responsibilities, indicates the folly of what is happening here. Publicly, Republicans trumpet the spoils of their trophy hunt—to abolish a Cabinet agency. But anyone who reads the fine print knows the bills reported by the various committees would expand Government, increase the number of separate Federal agencies, and decrease the delivery of services that produce economic returns far in excess of the current Federal investment in the Department.

The bill also could be called the "Let's Make Sure No One Figures Out How Much This Bill Really Costs Act of 1995." There is no CBO cost estimate of H.R. 1756 (the Chrysler bill), H.R. 2124 (the Mica bill), or the bill reported by the Commerce Committee. Including this massive bill in reconciliation—supposedly because it saves money—may be a good way to hide its real costs, but is no way to process important legislation.

Representative Chrysler claims his bill would save $7.7 billion over 5 years. But information OMB and CBO have provided to the committee indicates the bill will increase the deficit by about $2 billion during the same time. The Chrysler bill fails to provide for $2 billion in costs associated with closing the Department (including running the new Commerce Programs Resolution Agency, reductions in force, and contract terminations); falsely claims credit for cutting 25 percent of overhead charges, where no such charges exist; fails to include mandated costs of performing the 2000 Census and modernizing the National Weather Service; and falsely claims $325 million in savings from making the Patent and Trademark Office [PTO] fee-funded, when it already is 100 percent fee-funded.

The reported bill certainly does nothing to increase any savings of the original Chrysler bill. It exempts the Census Bureau and PTO from huge cuts applicable to all other surviving DOC functions. By creating many new free-standing agencies, it increases costs resulting from box-shuffling and creating new bureaucracies. And, by transferring DOC functions to various new or existing agencies, it reduces effective internal oversight activities of such functions and programs.

Any real savings in the legislation result primarily from provisions that permanently cap expenditures for surviving Department functions at 75 percent of fiscal year 1994 expenditures for each function. This arbitrary, permanent cap translates to far more than 25 percent cuts from current appropriated levels because it is based on fiscal year 1994 expenditures. Savings from the cap come not from dismantling the Department or creating new efficiencies, but instead from deep cuts in personnel and resources needed to carry out important statutory responsibilities. In fact, these cuts will make it impossible to perform the transferred functions effectively. Had our colleagues chosen to eliminate or modify statutory mandates relating to surviving DOC functions, this enormous, permanent reduction in funding might be justified, at least in fiscal terms. But preserving certain functions because they serve critical and necessary goals while precluding the ability to perform such functions appropriately is questionable policymaking at best and sheer intellectual dishonesty at worst.

The legislation might be called the "I Have No Idea What's In The Bill But I'm All For It Anyway Act of 1995." With just one hearing—no hearings were held on the bill actually considered by the committee—and no effort to construct bipartisan legislation, our colleagues have provided a gross example of how expedient political goals produce very bad legislation.

During markup, neither Members nor staff could explain the meaning, justification, or import of many provisions of the bill. For example, section 3205 repeals 11 explicit statutes relating to NOAA. No one could explain what these laws are or what they do. One Member noted these provisions could not even be explained by the primary committee of jurisdiction. Section 3205 also repeals "All other acts inconsistent with this subsection." Upon questioning, we were informed that no one could ascertain either the meaning or import of this provision. This is but one blatant example of provisions that will cause great confusion and prompt litigation.

Questions regarding the newly-created Patent and Trademark Corporation, including those relating to the constitutionality of transferring broad judicial and regulatory responsibilities to a Government corporation that is basically unaccountable to any Federal authority, were similarly unanswered, or perhaps unanswerable. Questions on the effect of exempting PTO employees from "provisions of title 5 relating to Federal employees" and the reason for not applying the Federal Advisory Committee Act (the so-called Sunshine Act) or the Freedom of Information Act to the Board of the PTO corporation were not adequately explained.

Even more basic questions were not answered. For example, no one could really say why it makes any sense to transfer NOAA to the Department of Agriculture—an approach Republicans on the Resources Committee explicitly rejected. The first Republican amendment offered to the substitute—to ensure that the Department of Agriculture would track hurricanes—underscores the absurdity of the approach taken in the bill.

Nor could anyone describe what an "independent establishment within the executive branch of Government" is, how it differs—if at all—from independent agencies like the Securities and Exchange Commission, or its relationship to other Executive branch departments and agencies. In fact, another Republican amendment was adopted to make the new entities created in the bill "free-standing"—a term that, so far as we can determine, may not appear anywhere in the United States Code to describe an agency of the Federal Government.

No one can explain why the bill abolishes domestic offices of the Commercial Service, which provide "how to" export assistance to smaller businesses, when estimates indicate these offices return $10.40 in increases sales, profits, jobs, and income for every dollar invested. No one can explain why Members who helped defeat a floor amendment to abolish EDA on July 26 voted in committee against an amendment reflecting the bipartisan EDA legislation reported by the Transportation Committee last week.

No one can explain why the reported bill commingles USTR and other trade/export functions performed by DOC in a new sub-Cabinet agency, makes huge funding cuts in surviving DOC functions—thus causing great disruption to employees, our foreign and national security interests, and to trade negotiations—and then requires USTR to submit a "comprehensive plan to consolidate Federal trade programs and activities." No one can explain how much leakage of critical technologies to countries like Iran, Iraq, North Korea, and Libya will occur when the permanent funding cap is immediately applied to functions previously performed by the Bureau of Export Administration—or how the funding cap will affect all other surviving DOC functions.

We do note the Republican substitute corrected one of the more glaring defects of the Chrysler bill. Under the Chrysler bill's permanent spending cap, annual expenditures of the Census Bureau would be forever limited to less than $14 million, thus ensuring that neither the year 1997 5-year snapshot or the year 2000 census could be taken. We note the cost of just mailing out postcards to the estimated 117 million households in 2000, at the current rate, would amount to more than $23 million. By exempting the Census Bureau from the permanent funding cap, the substitute amendment evidently envisions allowing the Bureau to perform its constitutional duties.

But this one correction does not conceal the fact that no one really knows what is in this bill, how it will work, or how much money it will cost. This is what happens when one is more interested in scoring political points than in legislating responsibly and sensibly.

We stand ready to work with our colleagues to craft responsible and sensible legislation that really will streamline Government programs and eliminate wasteful and unnecessary Federal spending.

This, however, is not such a proposal.

JOHN D. DINGELL.
HENRY A. WAXMAN.
ED MARKEY.

RON WYDEN.
JOHN BRYANT.
RICK BOUCHER.
THOMAS J. MANTON.
EDOLPHUS TOWNS.
GERRY E. STUDDS.
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SHERROD BROWN.
BLANCHE LAMBERT LINCOLN.
BART GORDON.
ELIZABETH FURSE.
PETER DEUTSCH.
BOBBY L. RUSH.
ANNA G. ESHOO.
RON KLINK.
BART STUPAK.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, October 10, 1995.

Hon. JOHN R. KASICH,
Chairman, Committee on the Budget,
Washington, DC.

DEAR MR. CHAIRMAN: On Monday, October 9, 1995, I transmitted to you the recommendations of the Committee on Commerce for changes in laws within its jurisdiction with respect to the Medicaid program, pursuant to the provisions of section 310 of the Congressional Budget Act of 1974 and section 105(a)(2)(B)(iii) of House Concurrent Resolution 67, the Concurrent Resolution on the Budget—fiscal years 1996–2002.

Regrettably, because of the Columbus Day holiday, when the committee transmitted its recommendations, the committee had not received the minority's dissenting views. The minority delivered their views to us this afternoon, and pursuant to our prior understanding, I am transmitting those views to you herewith for inclusion in the Commerce Committee's report language for title XVI of the Fiscal Year 1996 Omnibus Budget Reconciliation Act.

If I can be of any further assistance to you as you proceed with your committee's deliberations, please do not hesitate to contact me.

Sincerely,

THOMAS J. BLILEY, Jr.,
Chairman.

Enclosure.

MINORITY VIEWS ON THE PASSAGE OF THE MEDICAID TRANSFORMATION ACT

Future generations might very well label the "Medicaid Transformation Act" as the "Medicaid Decimation Act." This Act essentially abrogates the Federal Government's responsibility to protect and improve the health care of millions of Americans. Instead, it provides States with a virtually no-strings-attached check in the form of a block grant. Under the guise of "flexibility," the act fails to include even the most rudimentary enforceable requirements that the States use taxpayer funds to provide essential health care services to especially vulnerable and needy Americans.

It allows the States—with only minor Federal involvement—to determine who will receive services and what, if any, benefits they will receive. Further, it allows the States to determine how—if at all—they will regulate, oversee, and control participating providers. In short, the Medicaid Transformation Act slices the cord on a three-decade old safety net that has helped millions. Presently, the program serves about 18 million children, 4 million aged; 6 million disabled, and 8 million nondisabled adults.

The process by which this legislation evolved was particularly troubling. Aside from being veiled in secrecy with almost no opportunity for public input or congressional debate on the particulars of the proposal, the process culminated with committee members receiving legislative language only 36 hours before markup began: 36 hours to assess the impact of this 160-page health care bill for 36 million Americans; 36 hours to understand how 50 States could absorb a staggering $182 billion in cuts without depriving poor women, children, and elderly people of essential health care services; 36 hours to calculate how each State could effectively run a Medicaid program with growth caps as low as 2 percent of current spending; 36 hours to evaluate the potential impact of a State refusing to cover people whose only current access to care is through Medicaid; 36 hours to determine what happens if a State is unable to pay for health care when there is a recession, and thus a sudden increase in the number of people who need care; and finally, 36 hours to examine the effect on senior citizens of a State's failure to provide effective oversight over nursing homes.

Over the course of 2½ days, Democratic members endeavored to correct some of the many flaws of the Republican plan. But, hiding behind a red herring dubbed "State flexibility," Republicans in lockstep opposed virtually every amendment offered. Most of these amendments were designed simply to maintain existing protections critical to any viable health care program.

For example, one amendment would have ensured that States maintain basic nursing home standards enacted in the Omnibus Budget Reconciliation Act of 1987. These requirements were put in law after it became evident—through a succession of nursing home horror stories—that States either couldn't or wouldn't regulate the nursing home industry. They include prohibitions on the use of physical restraints or mind-altering drugs and other similar protections against poor and abusive care. Despite widespread belief that Federal regulation of nursing homes is working, the amendment was defeated. Republicans argued—not surprisingly—that States needed flexibility. But flexibility to do what? Leave the elderly vulnerable to such atrocities? Let the States pick and choose what protections the nursing home lobby of their State would allow them to implement? Or, at best, simply reinvent the wheel and repeat what already has been achieved and implemented efficiently by the Federal Government?

Over the next several days, dozens of amendments designed to protect the working middle class and the poor, and moderate the dismantling of Medicaid, were presented but quickly shot down.

Amendments were offered to maintain current provisions of law to protect against impoverishing spouses and adult children or imposing liens on family homes and farms to pay nursing home care for Medicaid-eligible individuals. They were defeated. Amendments to guarantee continued health care coverage for poor children, pregnant women, and infants and children with special needs were defeated. An amendment to provide coverage for mothers attempting to leave welfare and move to the work force was defeated. Even an amendment to ensure coverage for screening and treating of women with breast and cervical cancer was defeated.

The attack on health care for the most vulnerable in America did not end there. An amendment to reward States that had made progress in reducing health care costs through creative Medicaid demonstration programs was killed; an amendment to establish a public process for determining appropriate provider payment rates was killed; an amendment to guarantee access to good-quality care for rural residents through adequate payments to rural clinics was killed; an amendment to modify the formula was killed.

The form in which this act finally prevailed is startling. Now, regardless of decades of painful lessons demonstrating that laissez faire with the taxpayers' money doesn't work, States will determine—with no guidance or requirements—what, if any, money they will spend to provide health care to the needy. If a State suddenly finds itself faced with a dramatic increase in eligible individuals—such as during a recession, for example—it will be forced to cut services, expel beneficiaries, or both. And there is no contingency plan to deal with what happens if a State runs out of money—the revolution apparently moves too fast to worry about small details such as this. States, local governments, and—more importantly—helpless beneficiaries must now assume all the risks.

Republicans have proclaimed their plan an "improvement" that "saves" Medicaid. In reality, the Medicaid Transformation Act transforms this health care program into a shapeless, faceless shadow. The act provides that States will receive an annual check with which they can play Russian roulette with who gets health care and who doesn't. This is literally passing the buck. The Republican blueprint merely transforms a program—with some flaws—about which we know a great deal, into 50 programs about which we know nothing. As the Republicans have provided no details on how the States intend to do any of this, Medicaid is now flying blind without a compass in sight.

Of course, there is the shop-worn view that managed care will somehow be a magic bullet for each State. But managed care can offset only a fraction of the $182 billion in cuts over 7 years, and will barely dent the sparse 2 percent growth caps imposed on many States. Further, the act provides for distribution of Federal funds to States based on a formula that is almost certain to fail, and that reduces some States' spending to levels that cannot possibly provide sufficient funds or flexibility to serve their citizens. And even if States could implement managed care systems perfectly, it is foolish to assume that health care for millions isn't still in jeopardy. As a prominent leader in one of the Nation's most successful State managed care programs reminds us, "you can't do it on the cheap, and you can't do it on the quick." The Republican plan rejects that wisdom and depends on both.

September 22, 1995—the day this act passed—will not be remembered as a day when legislative compromise triumphed or sound public policy prevailed. Instead, it will be remembered as a day when a huge social experiment was unleashed by Congress with almost no details or public discussion. And because this plan essentially risks the health care of millions, this date might also be remembered as a day in which some of the most socially irresponsible legislation ever was passed by the Committee on Commerce.

JOHN D. DINGELL.
HENRY A. WAXMAN.
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JOHN BRYANT.
RICK BOUCHER.
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SEPARATE VIEWS OF MR. DINGELL ON THE MEDICAID TRANSFORMATION ACT

The Commerce Committee majority transmitted its report on the Medicaid title of the reconciliation bill to the Budget Committee at about 6 p.m. on Monday, October 9—a national holiday—apparently at the insistence of the Budget Committee's staff. Until that moment, the majority and minority on the Commerce Committee had operated under a longstanding, well-established, and mutually beneficial process for the filing of committee reports and any accompanying minority, dissenting, separate, and other views.

Under that process, followed prior to January 1995 when the Democrats were in the majority and since January 1995 when the Republicans have controlled the House, near-final drafts of committee reports would be shared with the minority, who would be given a reasonable—and sometimes more than reasonable—period of time to review their contents and suggest changes, edits, or other modifications. Of course, the minority does not have a veto over the contents of the report, and the majority is certainly entitled to include in a report both its policy judgments and whatever conclusions it may draw from the facts in the record. But the minority has always been permitted to question the accuracy of factual assertions in the report or to ask that potential misimpressions of fact be clarified. On more than a few occasions, conclusory statements based on such factual errors or misimpressions have had to be adjusted accordingly. And of course, suggestions as to grammar and syntax have generally been welcomed.

This process resulted in a better, more professional committee product. Although it took some modest additional time and occasionally provoked some professional disagreements, the process produced documents that could be relied upon confidently in future years by both sides and by any outside party as reliable sources of legislative history and especially the committee's intentions. It also saved the majority from potential embarrassment on the House floor, where the manager of the bill can be called upon by opponents to explain errors and omissions in the report.

The majority and minority on this committee generally worked well with one another during this process, probably because it was based on mutual courtesy and respect rather than on any written rule or right. In return for the courtesy of being given a reasonable time to review and comment upon the draft report prior to its filing, the minority committed to not using its views to criticize or even comment directly upon the contents of the report.

Until now, I am not aware of a single instance in which that process produced an unsatisfactory result or in which either side breached its understandings with the other. Regrettably, although hopefully not irreparably, that unblemished record has been stained by the filing of this Medicaid report.

This half-inch thick, single-spaced document was shared with the minority for the first time at 11 a.m. on Monday morning, October 9—2 hours after the Republican majority delivered to us for the first time its 400-plus page amendment in the nature of a substitute for the Medicare bill that was to be marked up the following day. Although that day was a national holiday, the minority staff was working to prepare for the Medicare markup. At around 4 p.m., we were informed for the first time that the majority planned to file the Medicaid report that afternoon. The only reason given was that the staff of the Budget Committee was demanding it. It obviously would have been impossible for the staff to review and offer intelligent comments on a document of that size and scope in just a few hours even if there were no other business pending that day or the next. Being placed in that position with a Medicare markup looming the next day went well beyond the point of reasonableness.

I am deeply perturbed that neither the chairman of the committee nor the committee staff had sufficient respect for their professional relationship with the minority or for the traditions of the committee to tell Mr. Kasich that he would simply have to wait, even if only overnight. But apparently such respect is lacking, for the report was indeed transmitted at around 6 p.m. that evening, with no minority review, input, or views—although we were told that the Budget Committee staff promised to include our views later in the printed report on the reconciliation bill. In light of this unprecedented breach of comity, I take this opportunity to do precisely what the minority, both Republican and Democratic, have always refrained from doing in minority, dissenting, or separate views—that is, commenting directly upon the contents of the report. There is indeed much to comment upon, because the extreme ideological agenda underlying the bill has resulted in the inclusion of a number of questionable factual assertions and the omission of a number of inconvenient facts to convey false impressions in the report. The speed with which it was obviously prepared to meet an artificial deadline has also resulted in a certain sloppiness in the use of language which does the committee little credit. I will highlight just a few examples:

South Carolina's Neonatal Cocaine Treatment and Prevention Program. The report contains a discussion of a program at the Medical University of South Carolina [MUSC] designed to reduce the number of crack babies. The report describes the program as an "unprecedented success" and decries the Federal Department of Health and Human Services' threats to terminate Federal funding as an example of unwarranted Federal interference with State innovation. The report fails entirely to note that HHS became involved only because serious concerns were raised about the inadequacy of MUSC's institutional systems for protecting human research subjects; the program was found to be violating the Civil Rights Act; and research experts declared the project to be "the worst kind of research, conducted by individuals who are not * * * qualified or competent." Incidentally, the attorney general of South Carolina, who testified at the subcommittee about the State's experience with HHS, was at the time of the hearing a named defendant in a lawsuit aimed at ending these abuses.

The Governors' Testimony. In discussing the Health Subcommittee's June 8, 1995, hearing on Medicaid, the report dutifully notes the appearance of several Governors, including Florida's Governor Chiles, and discusses some—but only some—of the testimony presented. To read the report, one would think that only Governors Edgar of Illinois and Engler of Michigan had anything useful to say. The report totally ignores Governor Chiles' testimony, which emphasized the great danger to senior citizens, poor people, and the States of limiting the growth of Federal spending on Medicaid, especially for growth States like Florida which are experiencing tremendous increases in their elderly populations.

Statements of Committee Intent. The report generously expresses "the committee's intention"—an intention not reflected anywhere, to my knowledge, in the record of the markup—"that states protect against the impoverishment of the community spouses and adult children of institutionalized family members" and that "the policy under current law * * * shall apply to children of institutionalized parents." Of course, there is absolutely no provision in the bill itself that ensures this result. In fact, the actual legislative record of the committee would convey to the objective observer precisely the opposite impression. The Republican members of the committee voted unanimously against Democratic amendments to preserve in statutory language precisely the protections now in current law. Thus, the intention expressed in the report is not only worthless as legislative history, it is contradicted directly by the plain record of the markup. Other expressions of the committee's intention sprinkled throughout the report should similarly be viewed with some skepticism.

There are many more examples of incorrect, misleading, or simply sloppy draftsmanship in the report in question. I have resisted the temptation to deal with the multitude of grammatical, syntax, and proofreading errors we might have been able to point out to the majority if given the chance—some of which, incidentally, dramatically alter the meaning of the sentences in which they appear.

For the moment, at least, it should suffice to observe that for no particularly good reason, the minority has been denied an important and traditional courtesy always accorded to the Republican members on this committee when they were in the minority. Regrettably, one of the few areas in the 104th Congress in which a modicum of decency and comity still prevailed has gone the way of so many other traditions of decency and comity in the House—swallowed up in the Republicans' urgent zeal to remake America because, like democracy itself, it is occasionally inconvenient. It is not too late to retrieve this mistake; for now, however, the question of whether it is worth retrieving—and worth preserving for the future—lies in the hands of the chairman and his Republican colleagues.

JOHN D. DINGELL.

MINORITY, ADDITIONAL, AND DISSENTING VIEWS TO TITLE IV

VIEWS OF DEMOCRATIC MEMBERS OF THE COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES ON BUDGET RECONCILIATION, SEPTEMBER 29, 1995

The Democratic members of this committee support national policies and programs to expand access to higher education. We offer no apology for our party's half-century support for programs that have enabled tens of millions of Americans of all walks of life to attend college.

The Federal Government's investment in higher education has had an extraordinary rate of return. Student aid has made our society fairer, more mobile, and more prosperous. Our economy is the strongest in the world, in large part, because our colleges have produced highly trained scientists, engineers, and managers. And considering the global competition American firms now face, the Federal Government should be doing more, not less, to expand access to college.

That is why Democratic members of this committee support expanding access to higher education. And that is why we oppose the committee's budget reconciliation proposal. The Republican reconciliation proposal requires student loan cuts of $10.1 billion over the next 7 years. In a nutshell, the majority's proposal will hurt students and parents. It will mean fewer loans. It will mean fewer banks participating in the program. Ultimately, the proposal could undermine the entire loan program.

STUDENT AID CUTS ARE COMPLETELY UNNECESSARY

Let us be clear about one thing: The committee does not have to cut the Student Loan Program to balance the budget. Republican claims to the contrary are easy to refute. Committee Democrats need only point to the House Republican proposal to hand out $245 billion in tax cuts to wealthy families; if our Nation can afford that extravagance, we should not be increasing college costs with this proposal.

The committee should not make these cuts for another, very simple reason—student loans have already been cut to the bone. Every time the committee has written a budget reconciliation bill in the past decade, it has cut student loans. We cut them by $477 million in 1986; by $295 million in 1989; by $2 billion in 1990; and by $4.3 billion in 1993. The committee has cut this program by more than $7 billion in the past 10 years. Student loans have already given at the office; they have made their fair share of sacrifice.

We think it is ironic that our Republican colleagues are trying to take some degree of credit for not including the elimination of the in-school interest subsidy in this reconciliation proposal. That is interesting, since it was the House-passed Republican budget resolution that suggested eliminating this subsidy in the first place, and it was the House Republican chairs of the authorizing committee and authorizing subcommittee who wrote in The Washington Post, that eliminating the subsidy was the fair thing to do.[1] This proposal did not just spring from thin air; it was the Republican proposal. It was they who advocated reducing student loan spending by $18 billion; they said it was doable. Now apparently because students and parents have increased the heat on them, and because our colleagues in the Senate realized how foolhardy these contentions were, House Republicans are retreating.

The Republicans painted themselves into a corner. Because they counted on savings from eliminating the subsidy to meet their reconciliation savings target of $10.1 billion in student loan cuts, they now have to find other ways to reduce student loan spending. And the Republicans cannot avoid reducing student benefits or charging their parents more in order to comply with the conference agreement's instructions to the committee.

REPUBLICAN CUTS WILL HURT STUDENTS AND PARENTS

The proposal the majority has adopted does away with the interest subsidy to students during the first 6 months after a student leaves school. Eliminating this subsidy will increase students' costs by $3.5 billion, a pretty hefty tax on student borrowing. The proposal ignores one of the principal reasons this 6-month grace period was put in the law in the first place. It was adopted to help reduce potential defaults.

We know that many students often do not get a job right after college for a variety of reasons. Some are studying for licensing exams. Some have a hard time finding employment. The committee discovered it was less costly to give these students a little time to get their feet on the ground—to get a job, earn some money, and begin paying their bills—than having to cover the costs of potential loan defaults. Reliable studies clearly demonstrate that loan defaults occur most frequently in those first few months after a student completes school. So students were given 6 months to get their economic house in order.

Now the Republicans want to ignore reality, to ignore all the facts, and take this away. Doing away with the grace period interest subsidy will not only cost students more—$3.5 billion more over 7 years—but it could lead to increased loan defaults. This is bad, illogical public policy.

The other parts of the Republican proposal are just as bad. Republicans have reduced the amount of money parents can borrow under the PLUS Loan Program for parents of college students. They have also increased the interest rate charged to parents on loans they receive. Why they insist on charging parents more to borrow less is beyond us. This is not a sound way to balance a budget. And, from information from major lenders in the parent

[1] See exhibit 1.

loan program, these changes could totally undermine the PLUS Program. Past experience points out very clearly that the only result from the kinds of changes our colleagues have adopted will be fewer loans to fewer students. Their heated protestations notwithstanding, Republicans cannot escape that fact.

We also know that, with the Republican imposition of new costs to parent loan lenders, guaranty agencies and secondary markets, lenders could well leave the program. This is no idle speculation; these program participants have put the Congress on notice time and time again that they will refuse to make or guarantee loans if student loans become less profitable. They repeated that concern to us recently when these Republican options were first floated. If lenders leave the program, students will be the losers. Fewer loans will be made. Or certain students, especially high-risk students, will not get loans. Simply put: lenders will redline.

The reduction of payments to State guaranty agencies—agencies that have been established to assist and encourage private lenders to participate in the program and to monitor loan practices to ensure program integrity—could also lead to fewer loans being made, and potentially increased loan defaults. It is no exaggeration to fear the eventual downfall of the entire Student Loan Program.

Another provision adopted by the majority would shift more costs to the States, which could cause a further decline in student loans. States may be less willing to guarantee loans, especially to at-risk students. Again, students could be hurt significantly.

ELIMINATION OF DIRECT LOAN PROGRAM

The majority proposal also terminates an important Student Loan Program, the Direct Lending Program. This is the second student aid program that the House Republicans have voted to eliminate in the last 2 months. At a time when the Federal Government should continue its efforts to expand access to higher education for all deserving students, the Republicans inexplicably reverse course, eliminating worthy programs.

The proposal to terminate direct lending is particularly disconcerting considering the program receives its highest accolades from the very schools and students who have had the opportunity to participate in direct lending. Members on both sides of the aisle need only read their mail to learn that the constituents who use the program like the program.

The program significantly simplifies the loan application process to the benefit of students. It brings much-needed competition to the student loan system. Students and schools have informed us that competition from direct lending has led to significant improvements and streamlining in the bank-driven loan program. Further, with the elimination of the Direct Loan Program, consolidation of the student loan market will result—to the injury of the ultimate customers, students, and their parents.

The Republican claim of budget savings from the elimination of the program is based on manipulated budget numbers. A fairer scoring would show that direct lending saves money for the Government. Perhaps that is one reason, among many, why Federal Reserve Board Member Lawrence Lindsey (a Republican appointee) and former Reagan economist William Niskanen (now of the CATO Institute) oppose terminating the program.[2]

Why the Republicans want to eliminate a program that works to the benefit of schools and students, and that brings competition into our student loan system seems to have more to do with political posturing than sound public policy. Or, maybe it is because they favor the interests of big banks more than those of students and working families. That could be one of the reasons that they have adopted a provision that reduces lenders fees. Why should banks be charged less while students and parents are charged more? Whatever their reasoning, we can find no justification for eliminating a program that benefits students while at the same time reducing fees to lenders. In our opinion, that is bad policy.

LEGISLATING IN THE DARK

The majority will deny the harmful effects of their reconciliation proposal, but they cannot present any hearing record to demonstrate the purported benign effect of their cuts. They cannot do that because there is no meaningful hearing record. There was not a single hearing on the proposal the committee considered.[3]

The committee never heard any testimony on how much could safely be cut from the program. We never heard any testimony on what impact this proposal will have on both the availability and cost of loans. We never heard any testimony from students or parents or the smaller banks that participate in the program.

The Republicans have simply put themselves in a bind caused by their rush to cut taxes and find a way to pay for those tax cuts. Cutting student loans is merely a convenient target. Their leaders first said they could easily make these cuts. Now they realize that their initial proposal generated considerable opposition and would have caused tremendous harm to students and parents. It would have made it increasingly difficult for these families, especially working class families, to pay for college. Now they are quickly trying to backtrack, but the proposal they have reported out has the potential of undermining student loans and making it quite probable that fewer students will be eligible for fewer and fewer student loans. And it appears that they are cutting a slick deal for banks in the process. We think this is appalling.

It is time for the House Republicans to admit that their initial plans were wrong. Student loans are investments in our future. Our Nation will continue to be competitive and productive only if we have a well-educated and well-trained work force. Student loans help us achieve that goal. They are the last cuts we should make.

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[2] See exhibit 2 and 3.

[3] On May 23, 1995, the Oversight and Investigations Subcommittee held a hearing on the operation of the Federal Direct Loan Program. Most of the witnesses offered testimony favorable to the program. Of the half-dozen or so witnesses who testified, only one, Representative Ernest Istook (R-OK) who is not a committee member, testified that the program should be abolished.

Curiously, full committee Chairman Bill Goodling sang a different tune on that spring day. Expressing support for allowing the direct loan program to continue operating, albeit on what he described as a "level playing field", Mr. Goodling stated:

> Why not find that out by having the two systems [the direct loan program and the guaranteed loan program] or three systems working at the same time, fairly, on a level playing field, and then making the decision which way we should go.

REPEAL OF DAVIS-BACON AND SERVICE CONTRACT ACTS

The proposed repeal of the Davis-Bacon Act and the Service Contract Act is farcical. The Senate parliamentarian has already ruled that repeal of these two laws may not be included in the Senate budget reconciliation legislation because it would violate the Byrd Rule.[4] So what is the point? And to the extent that there are any savings from this repeal, such savings will come from the pockets of hard-working construction workers and service employees.

Turning first to the Service Contract Act [SCA], it has enjoyed bipartisan support since it was enacted in 1965 and amended in 1972. The law has been virtually without controversy because it protects some of our most exploited and victimized workers. When the 88th Congress enacted the law in 1965, it found service contract workers to be "the most unskilled, the weakest, and the poorest of our citizens" who were greatly in need of labor standards protections.

Today, 30 years later, the SCA continues to protect almost 1 million workers—most of whom are minority and female workers in low-wage occupations.

Repeal of the SCA would shred the safety net, as modest as it is, for these service contract workers, many of whom earn a very modest wage even with the SCA. For example, janitors in Little Rock, AR earn $10,020 annually under the Service Contract Act. In Atlanta, janitors receive $12,730 annually; in St. Louis, janitors make $12,860 annually; in a high-wage area like Boston, janitors make $17,200 annually. When the Federal poverty line of $14,784 for a family of four is considered, it is clear that even with the protections of the SCA, workers still need the protections of the act.

Committee Democrats oppose the repeal of the Davis-Bacon Act because its purpose—that the Federal Government should not use its vast procurement power to depress the wages and living standards of construction workers across the country—is as valid today as it was when the law was first enacted.

The Davis-Bacon Act ensures that the prevailing wage structure in the local labor market is not destroyed by large scale Government funded construction projects. Local economies can experience tremendous destabilization where Government projects cause contractors to underbid local wages. Prevailing wage laws help provide a stable foundation for workers throughout the industry, whether union or nonunion, whether working on Government or private projects. When prevailing wage laws are repealed, contractors slash wages and benefits to win Government contracts. This wage-cutting has a ripple effect throughout the construction industry, and all workers are hurt.

FINAL COMMENT ON COMMITTEE PROCEDURE

The Democratic members of the committee were greatly dismayed with the manner in which the majority conducted the markup of this legislation. The majority employed what best might be described as a closed rule. The chairman announced that no perfecting amendments to the chairman's mark, whether or not they

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[4] The Senate Byrd Rule prohibits consideration of provisions which do not effect direct spending as a part of the reconciliation process.

achieved budget savings or amended provisions that had no budgetary implications, were permitted. No amendments to the Republican proposal were allowed, and the majority used strong-arm procedural devices to restrict the process.

The minority was only allowed to offer an amendment in the nature of a substitute, that is, an alternative package for slashing $10 billion from the student loan programs. This condition amounted to procedural extortion. Considering that Democrats, to a member, did not believe that the Student Aid Program needed to be cut $10 billion to balance the budget when tax cuts are being handed out to the rich, the majority's offer was laughable, if not insulting.

Democratic members were limited to offering 5-minute opening statements before the chairman's mark was brought up for consideration. No debate was allowed on the chairman's mark or the Republican amendment in the nature of a substitute.[5] Republicans moved the previous question on the substitute almost immediately.

Permitting members to speak for 5 minutes is not fair exchange for trampling on the right of Democratic members of the committee to offer amendments to the chairman's mark. The conditions set by the majority for consideration of its proposal were utterly unacceptable.

The effective adoption of a closed rule in committee is contrary to the letter and spirit of the rules and procedures of the House. Any member of this committee should be entitled to disagree, in whole or in part, with the Republican package. And the right to express that opposition, in whole or in part, by offering perfecting amendments is among the most important privileges and responsibilities held by Members of Congress.

The Nation's students and the public deserve better; they deserve public disclosure and full debate on a proposal that would saddle them with billions of dollars in increased college costs. The majority decided its proposal could not withstand the light of day and rammed it through the committee. This is a sad day for this committee and the Nation.

WILLIAM L. CLAY.
DALE E. KILDEE.
MATTHEW G. MARTINEZ.
TOM SAWYER.
PATSY T. MINK.
JACK REED.
ELIOT L. ENGEL.
BOBBY SCOTT.
LYNN C. WOOLSEY.
GEORGE MILLER.
PAT WILLIAMS.
MAJOR R. OWENS.
DONALD M. PAYNE.
ROBERT E. ANDREWS.
TIM ROEMER.
XAVIER BECERRA.

[5] The Republican substitute was not different than the chairman's mark, except for a change in the measure's short title. This device was used merely to cut off debate and preclude amendments.

GENE GREEN.
CARLOS ROMERO-BARCELÓ.

[Exhibit 1]

[From the Washington Post, April 21, 1995]

MAKING COLLEGE LOANS FAIR

(By William F. Goodling and Howard McKeon)

In a clearly calculated campaign to misrepresent the facts, claims are being made that Republicans intend to eliminate most federal student aid programs: student loans, Pell grants, college work-study. Or as one congressman put it in a speech on the House floor. "We [Congress] are going to deny college loans to middle class working who want to pick themselves up by the bootstraps."

None of this has any relationship to the truth. Here are the facts. Republicans support the Pell grant, work-study and student loan programs. The Pell grant program is essentially a voucher to low-income students to attend college. Last time we looked, Republicans supported vouchers. Pell grants are the one student aid program that bypasses bureaucracies and puts money directly in the hands of students. Nothing could be more Republican than that. We will also fight to protect the work-study program. Again, if there was ever a Republican program, it is one that helps millions of college students work to pay for their education.

Regarding student loans. Republicans are attempting to do what is fair. Again, let us be clear: We fully support this program and would not consider its elimination. But like The Post, we support having those who benefit from government loans pay for them. Is that so controversial? President Clinton's own budget director, Alice Rivlin didn't think so. She included it in a list of recommendations to reduce the deficit.

Under the current federal student loan program, qualifying students have the interest on their federal loans paid by the government while they are in school, and for up to six months after they graduate. This subsidy costs the American taxpayer almost $2.5 billion a year—money that is never repaid.

Given the fact that our nation is almost $4 trillion in debt, we are not sure this subsidy can be justified any longer. Something has got to give. Everything is on the table, from health care to farm subsidies to foreign aid to, yes, interest subsidies. In our view, if it takes a reduction in loan subsidies to save such programs as Pell grants, work study and the entire student loan program itself, it's a choice we are willing to seriously consider.

We make no bones about the fact that balancing the federal budget is the single best thing we can do for our children. According to Alan Greenspan, a balanced budget would produce a 2 percent lower interest rate for everyone. Most important, it would mean that we could finally begin to put a down payment on the federal debt that mortgages the future of our children.

Many have argued that in-school interest subsides help low- and middle-income lads afford college. This is not the case. First, the criteria to qualify for interest-free (taxpayer-funded) federal loans are not based solely on income; they are also based on the cost of the college the student chooses. This allows students with relatively high incomes to qualify for government-subsidy loans by choosing expensive colleges and universities.

Second, opponents of eliminating the in-school interest subsidy will make the point that student loans are different from other loans. On this point, we agree. Unlike any other type of loan of which we are aware, student loans actually pay the borrower back—and then some.

Any college-caliber student, even one from a disadvantaged background, can expect to have a future income well above the national average. According to a recent survey, graduates of four-year colleges can look forward to an average annual income of $32,600—a full $14,000 more than the average high school graduate.

Others have argued that without the in-school interest subsidy, many students would not be able to afford the debt they would amass in school, and thus will simply choose not to go to college. Again, this is highly unlikely. For the average student, removal of the in-school interest subsidy will amount to an extra $21 a month over the 10-year repayment period. Thus is about equal to the cost of basic cable television. For students borrowing the maximum amount all four years, the added cost amounts to approximately $45 per month. The only students who would face substantial increase in their monthly payments are "professional degree," students, such as doctors and lawyers. Of course, professional students will have average annual income of almost $75,000, and lifetime earnings in excess of $3 million. In this light, a higher payment does not seem unreasonable.

The real issue in this debate is fairness. Is it fair for high school graduates to pay taxes to subsidize future high-income earners? We think the answer is obvious.

In the 1992 presidential campaign, candidate Bill Clinton often stated that to truly reform government we must be willing to say there will be "no more something for nothing." Mr. Clinton talked of establishing a new student loan program whereby anyone who wanted a loan would get one. There was on qualification, the loan had to be repaid. "Opportunity plus responsibility." Clinton told the students. "No more something for nothing." We agree.

[Exhibit 2]

[Lobbying on both sides of the student loan issue has been fierce and contradictory. Here is an independent view from William A. Niskanen, Chairman of the Cato Institute and a former economic adviser to President Ronald Reagan.]

DIRECT STUDENT LOANS MERIT FURTHER TESTING

(By William A. Niskanen)

House Republicans are about to end the direct student loan program, apparently on the basis that it is endorsed by the Clinton administration and opposed by the banks. That would be a mistake.

There is a reasonable case that the federal government should not provide any student loans. For the moment, however, the controversy is whether student loans should be financed by the government. The administration proposed to substitute direct loans for all guaranteed loans over the next two years. In the rush of appropriations and reconciliation deadlines, the House is poised to eliminate the direct loan program and the Senate has imposed severe limitations on it. The issue on which this controversy should be resolved is whether guaranteed or direct loans incur the smallest cost to the taxpayers.

Under the guaranteed loan program, banks now make student loans with the following characteristics:

No initial credit analysis is required;

the loans are fully guaranteed by the federal government;

for the period before any repayment, banks receive an interest payment from the government equal to the Treasury-bill yield plus 2.5 percentage points, and

at the end of this period, banks may sell the loan or start to collect on the loans, at which time they receive an interest premium of 3.1 percentage points.

These guaranteed loans are a sweet deal for the banks; unless they choose to collect on the loans, the banks provide no services other than to make a loan guaranteed by the federal government at a substantial premium above the rate if they made the same loan to the government. Moreover, because lenders have little incentive to be diligent collectors of guaranteed loans, the government has set up a complex and costly system of nonprofit guarantee agencies to manage these loans.

Under the direct loan program, in contrast, the federal government finances the loans and contracts with private loan service firms to serve the loans. The interest cost of these loans is the Treasury borrowing rate, and the service cost are based on competitive bids from private loans service firms. At issue is whether the cost of servicing the direct loans is higher or lower than the sum of the interest rate premium and the cost of the guarantee agencies; accounting for administrative costs on the same basis, a Department of Education study estimated that the total cost of direct loans to the taxpayers was lower by about 3.9 percent of loan volumes. That estimate should not be regarded as the final word, because the record of direct loans is still quite limited; that estimate, however, should be sufficient to merit a continued parallel test of guaranteed and direct student loans for several more years without making a premature judgment in favor of one approach or the other.

America's banks are burdened with too much regulation. And the budget of the Department of Education is much too large. They way to help banks, however, is to reduce these regulations, not to pay them a premium for guaranteed student loans. The Education budget should be cut by eliminating whole programs, not by reducing the necessary administrative costs of direct students loans. The crunch of reconciliation is not a proper venue for evaluating the most efficient way to provide student loans. The two programs should be allowed to compete and then be carefully evaluated—on their merit and as a stimulus to each other.

[Exhibit 3]

[From the New York Times, Aug. 20, 1995]

G.O.P. REVISES A BUDGET RULE TO HELP BANKS—CUTS THEIR COMPETITION FOR LOANS TO STUDENTS

(By Adam Clymer)

WASHINGTON, Aug. 19.—After complaints from banks that have seen their share of student loans drop sharply, Republicans have changed the accounting rules to make it easier for Congress to kill off the banks' competition—a Federal program that makes direct loans from the Treasury.

The Republican-led House of Representatives has also voted to reduce the amount the Department of Education can spend supervising the system of Federal guarantees for banks that make student loans—a program has frequently had management problems. The Senate has yet to act on the House proposal.

Under current law, the direct-loan program is expected to provide $13.8 billion in student loans in the year beginning Oct. 1, while federally guaranteed bank loans will provide $15.3 billion. In 1993, the year before the direct program was created with strong support from President Clinton, bank loans made up all $19.2 billion in Federal student loans.

The direct loans have proved popular with students because the money comes through faster, and with university administrators, who have found them to be simpler to administer. Banks, however, have long treasured the guaranteed loan program, which offers profits without much less risk than they have on other loans.

A big boost for the direct loan program, enacted in the 1993 budget reconciliation bill, was an accounting rule that required the Congressional Budget Office and the Office of Management and Budget to exclude Federal administrative expenses when calculating the effects of loan programs on the Federal budget.

Both sides agree this gave direct loans an unfair advantage in any budget-making comparison, since more Federal money is spent on administering the direct-loan program than on the guarantee program.

Seizing on that, Republican opponents of the direct-loan program put a very unusual directive into this year's budget resolution. It ordered the Congressional Budget Office to include administrative expenses of the direct-loan program, which are estimated at $441 million for next year, in its budget calculations—but not the Government's outlays to administer the guaranteed loan program, which are estimated at $270 million next year.

When the Budget Office followed orders last month the Republicans hailed the figures as a reason for "scrapping the direct-lending program," in the words of Representative Howard P. McKeon, the California Republican who heads the subcommittee dealing with higher education.

But the Clinton Administration, Senate Democrats and many supporters of direct loans cry foul.

Senator Edward M. Kennedy, Democrat of Massachusetts, accused Republicans of "cooking the books." Marshall Smith, Under Secretary of Education, accused them of "a venal assault on student aid" and "putting bankers first."

Mr. Kennedy and White House officials said if the administrative costs of both programs were counted, the direct loans in total would again prove to be cheaper for the government.

Even one supporter of the changes, John E. Dean, a consultant to the Consumer Bankers Association, agreed that $160 million in Federal payments to assist the 40 agencies around the country that administer the guaranteed loan program meet their administrative costs should be included, although he argued that the other $110 million in supervisory costs should not be counted because much of it was unnecessary. These agencies have often been criticized in the past, and in 1990, one of the largest, the Higher Education Assistance Foundation, went broke while carrying $9 billion in loans.

And a conservative Republican economist now serving on the Federal Reserve Board has sought to halt the changes for the loan program. The Fed governor, Lawrence Lindsey, criticized the step as "making the change the industry proposes without looking at other changes."

In a letter to Senator Spencer Abraham, a Michigan Republican, Mr. Lindsey wrote that "As long as it is necessary to provide a profit to induce lenders to guarantee student loans, direct lending will be cheaper." Mr. Lindsey is in charge of consumer finance at the Fed, and in an interview on Wednesday, he said bankers had "selected the change that makes them look good."

He also said the argument that university officials make about the direct system as simpler for them was "a compelling argument for the advantage of direct loans to the economy."

In Seattle, for example, Eric Godfrey, assistant vice president of the University of Washington and director of financial aid, said the university was very pleased with the direct-loan program "We would characterize our first year in the program as being very close to an unqualified success," he said.

The debate over the system does not involve interest rates, which are set by the Federal Government for both programs.

But Mr. Godfrey said the direct-loan program was simple for students to understand and much easier for the university to deal with than the 700 banks and 40 or so state guarantee agencies it used to work with. Students had $13 million in their hands in the first week of school last year, compared with $3 million in the first week of the 1993–1994 school year, when the university last used the guarantee program.

Just as Mr. McKeon would like to see the direct program abolished, the Clinton Administration urged Congress to move quickly to eliminate the guarantee program entirely, saying the direct program was cheaper and better.

But others argue students are best served by the competition. That has been, for example, a strongly held view of Senator Nancy Landon Kassebaum, the Kansas Republican who heads the Senate Committee on Labor and Human Resources. Even one guarantee agency official, Sheryl Hagemeir, vice president of the American Student Loan Association, said, "We welcome the competition," and said universities that wanted the direct loan program should be allowed to join it, but not required to, as they could be under existing law.

Terry Hartle, vice president for government relations of the American Council on Education, said eliminating either program would be worse for students because competition had forced the banks to do a better job of providing services, and continuing the guarantee program would keep the direct program on its toes. He also said the House Appropriations Committee's proposal to eliminate most of the $110 million spent on supervision of guarantee agencies was "a very risky thing to do."

One past director of the Congressional Budget Office, Robert Reischauer, said the sort of instruction the Republicans had issued to the Budget Office about accounting for administrative costs was very unusual. He found it comparable to a Congressional habit of preferring the lower estimates of politically popular loans to Israel from the White House over the more expensive estimates of the less-political Congressional Budget Office. But Mr. Reischauer said the change made sense, even though it should have gone further and included the costs on guaranteed loans. "If you are going to do it, do it right," he said.

Mr. Reischauer, who left the job at the beginning of this year, was preceded by Rudolph Penner, who has recently worked as consultant to the student-loan industry. He agreed Friday that it was very unusual for the Budget Office to be ordered how to make its calculations on a program. But in this case, he said, "It has put the whole thing on a better basis." He also said it was very difficult to decide just which administrative costs should be included in estimates for the guarantee program.

One argument House Republicans make for killing the direct program is that doing so would enable them to make less severe cuts in other student loan programs, like interest subsidies.

Another clear Republican motive is to attack a popular program created by President Clinton. A July 27 "Dear Colleague" letter from Mr. McKeon and Representative Bill Goodling of Pennsylvania, chairman of the House Committee on Economic and Educational Opportunities, began by denouncing "the President's fundamental belief that the Federal Government can run the student loan program better than the private sector."

And they complained of the Department of Education's use of its funds to advertise direct loans as "President Clinton's New Direct Student Loan Program." That proved, they said, that "The President has chosen to make the program an important component of his re-election campaign."

MINORITY, ADDITIONAL, AND DISSENTING VIEWS TO TITLE VII

We are strongly opposed to extending for the next 7 fiscal years section 10101 of the Omnibus Budget Reconciliation Act of 1990 [OBRA], which requires the Patent and Trademark Office [PTO] to annually deposit in the Treasury specific levels of patent surcharge fees.[1] This proposal allows an increasing amount of fees paid by users of the Patent and Trademark Office to be diverted away from the PTO and toward the general Treasury.

In essence this is a tax on innovation—the very engine of our economic growth. It is astounding to us that the party seeking to cut capital gains in a purported effort to spur innovation would advocate a tax on the actual process of innovation.

It is clear that allowing the continued diversion of funds away from the PTO does absolutely nothing to benefit users of the PTO. Yet every year the amount of user fees diverted to the general Treasury increases.[2] This year the Republican Congress has proposed diverting a full $21 million in user fees away from the PTO. These are funds that should be used to expedite the process of patent review and benefit users and the American public.

We recognize that the PTO surcharge was originally established as part of the 1990 budget agreement. However, when the surcharge was written into law, it was never contemplated that these fees would be diverted away from the PTO to the degree they have been. This year, we are seeing a proposal from the Senate that is so sizeable that the PTO will not be able to sustain an acceptable level of services if it is adopted. This is clearly an experiment which has failed and which should be allowed to sunset.

[1] In 1990, the PTO was funded through a mixture of user fees and taxpayer revenues. As a result of OBRA, additional user fees were established to replace taxpayer revenues. In short, PTO became entirely self-supporting.

Section 10101 was adopted for budget scoring purposes. Revenues from the surcharge were to be placed in a special account in the U.S. Treasury that was "available only to the Patent and Trademark Office to the extent provided in appropriations Acts."

[2] Each year since fiscal year 1991, Congress has appropriated for the PTO a sum less than the amount that was deposited in surcharge fees in the general Treasury. The difference, that is, the amount Congress withheld from the PTO, was $8.1 million in fiscal year 1992, $12.3 million in fiscal year 1993, $14.6 million in fiscal year 1994, $24.6 in fiscal year 1995, for a total amount of $59.7 million. In fiscal year 1996 the House has proposed withholding an additional $21 million and the Senate has proposed withholding an additional $55 million.

We would also note that H.R. 1659, Mr. Moorhead's bill to create an independent government corporation out of the PTO, would prevent these very same fees from being diverted to the general Treasury. This would appear to be inconsistent with the proposal before us today. We also object to the fact that we are considering this proposal without the benefit of hearings, and without understanding its impact on the patent community, innovation, or the American public.

JOHN CONYERS, Jr.
PAT SCHROEDER.
BARNEY FRANK.
HOWARD L. BERMAN.
RICK BOUCHER.
JOHN BRYANT.
JACK REED.
JERROLD NADLER.
BOBBY SCOTT.
MELVIN L. WATT.
XAVIER BECERRA.
JOSÉ E. SERRANO.
ZOE LOFGREN.
SHEILA JACKSON-LEE.

MINORITY, ADDITIONAL, AND DISSENTING VIEWS TO TITLE VIII

The unanimous vote by which the budget reconciliation recommendations were adopted is testimony to the amount of support Members on this committee have for the solutions that were worked out.

The plan to recommend the so-called High One formula—a recalculation of certain military retirement payments—that was adopted by the committee on August 1, 1995, was justifiably vacated and the more sensible solution of asset sales was set forth in its place.

Observers will note that the gentleman from Texas, Mr. Edwards, in an effort to defeat High One had offered an amendment on August 1 that would have given the committee time to find just such an alternative solution as was eventually found. While his amendment was voted down, I believe it is useful to note that, in all practical effect, it was adopted and the intervening time was used to work out a solution that did not break faith with service personnel.

I believe this is further evidence of the merit of a process which dignifies the value of ideas and promotes the environment for the exploration of those ideas. As we continue to tackle difficult and divisive issues, I urge the committee to go forward in that spirit.

RONALD V. DELLUMS.

MINORITY, ADDITIONAL, AND DISSENTING VIEWS TO TITLE IX

The bill approved by the committee represents an unprecedented assault on the Nation's resource management and environmental laws, and also misrepresents the amount of revenue it will raise towards meeting the reconciliation responsibilities of this committee.

Those two characteristics of this bill are closely related: for by parceling out wholesale change in Federal law and reinterpreting public policy for the benefit of special interest after special interest, the majority has concocted legislation that, contrary to raising revenues to reduce the deficit, costs taxpayers billions of dollars from the management and development of public resources that belong to all Americans.

This legislation is truly Christmas in September, an unabashed capitulation to powerful resource industries that have long enjoyed and profited from multibillion dollar taxpayer subsidies—and who now want even more. This legislation gives it to them. The provisions of this legislation constitute a veritable cornucopia of costly, special interest giveaways that run rampant over environmental law and deprive the people of the United States, who own these resources, of a fair return from their exploitation and development. In addition, this bill makes a mockery of the reconciliation process by converting a procedure intended to reduce federal debts and waste into a rummage sale of valuable Federal assets at bargain basement prices.

Instead of asking those special interests to join in the sacrifice that is being required of virtually all other members of the American society—and especially seniors confronting drastic changes in Medicare and Medicaid, middle income workers who will lose tax benefits, students who will lose educational funding and loan assistance, farmers who will lose support programs—this legislation showers new, additional and lucrative benefits on resource special interest, including many multinational conglomerates whose interests are little related to the best interests of the United States and its citizens.

The treasures of America—our oil and gas reserves, our gold, silver and other hard rock minerals, our water, our public lands—are being dispensed for pennies on the dollar while our efforts to properly manage and preserve those resources are decimated. Ironically, many of those who implore us to "run government like a business" are among those who voted down the line for public resource giveaways that would land any private business in Chapter 11.

ARCTIC NATIONAL WILDLIFE REFUGE

By a vote of 27 to 14, the committee rejected an amendment by Congressman Vento to strike language to authorize oil and gas leasing of the 1.5 million acre Coastal Plain of the Arctic National Wildlife Refuge [ANWR]. The committee also rejected: First, an amendment by Congressman Miller that would have voided the leasing authority if the State of Alaska prevailed in a lawsuit challenging equal division of the revenues with the Federal Government; second, an amendment by Congressman Vento to prohibit the export of any oil produced in ANWR; and third, an amendment by Congressman DeFazio to strike the unprecedented, permanent exemption from environmental scrutiny under NEPA for any ANWR leasing or development activity.

The measure adopted by the committee creates wholesale exemptions from environmental and other laws applicable to the management of oil and gas leasing. This ironically provides less protection, public process and oversight for developing a national wildlife refuge—which has been in protected status since the Eisenhower administration—than is the currently the case on the public lands elsewhere in the country. The bill unjustifiably and unscientifically ties the Secretary's hands by barring him from setting aside any more than a cumulative total of 30,000 acres from leasing, which effectively precludes him from protecting the "core" caribou calving area, a longstanding issue in the debate over ANWR. The bill also undermines international agreements which are intended to protect wildlife. It makes Federal officials subject to $10,000 per day fines for missing leasing deadlines. In essence, the bill turns the management of this unique wildlife refuge over to the decisions of the oil and gas industry which need not operate with the constraints of the resource and species protection laws that apply elsewhere in the United States.

The ANWR provision, which provides the majority of revenues in the majority's budget bill ($1.3 billion over the next 7 years), is doubly deceptive on the amount of revenues it purports to raise for the Treasury. First, the $1.3 billion in estimated bonus payments is based on projections dating from the Bush administration which anticipated oil prices rising to $38.60 per barrel by the year 2000. By contrast a recent report from the U.S. Geological Survey downgrades the estimates of oil reserves in ANWR.

Second, the majority assumes that Congress can unilaterally amend the terms of Alaska's admission into the Union (Alaska Statehood Act of 1958), changing the revenue split from 90 percent State/10 percent Federal to 50/50, thereby yielding far more revenues for the Federal Government than current law permits. However, such a reduction in the State share will surely be challenged in court. If a court were to find for the State, actual Federal share of the revenues declines to only $260 million, undermining the deficit reduction goals of this reconciliation bill. The senior Senator from Alaska already has predicted such a suit, and much of the debate in the Resources Committee acknowledged both Alaska's right to file such a suit and the support of many Members for the State position.

The majority's text authorizing ANWR leasing provides fewer environmental and substantive safeguards than legislation supported by the Reagan and Bush administrations and reported in the past by congressional committees. Indeed, the bill abrogates the applicability of all other Federal environmental and species protection laws to the ANWR leasing decision, relying on an incomplete 10-year-old report from the Reagan administration.

In sum, the majority's text—which has not been the subject of any public hearings—seeks to avoid environmental lawsuits and public process by exempting ANWR leasing from environmental laws. It also exempts ANWR from the basic laws governing oil and gas leasing and thus from such requirements as bonding and reclamation which apply even to less sensitive public lands elsewhere in the country. At the same time the majority is acting with full knowledge—as Chairman Young admitted—that this legislation invites a lawsuit from the State of Alaska to enforce the State's entitlement to 90 percent of the revenues, thus nullifying the purported value of ANWR for deficit reduction.

POWER MARKETING ADMINISTRATIONS

The committee's disposition of Federal power assets similarly provides sweeping exemptions from environmental laws and energy regulation policy, while denying the Treasury the sizable income stream from power sales that is owed to the taxpayers over the next several decades. The majority appears to be guided by the principle: sell it now, sell it cheap, and ignore the future losses.

Alaska Power Administration

The reconciliation bill sells the assets of the Alaska Power Administration—two dams and associated power facilities—far less than the remaining value of the taxpayers' investment in these projects. The sale prices is about $90 million less than the remaining investment to be repaid, and about $9 million less than the net present value of the repayment that would otherwise be received over the next several years. By setting the sale price below the net present value, the purchases of the Alaska Power Administration may buy it a lower price than even the minimum bid set for the sale of the Southeastern Power Administration. These purchases have been reserved to the existing APA customers—there was not competitive bidding on these assets to ensure the highest return to the taxpayer.

APA purchasers also are exempted from hydropower regulation by the Federal Energy Regulatory Commission. The FERC has a national responsibility to ensure that the public interest is served when our navigable waterways are dedicated to hydropower production. This bill exempts these two hydro projects from FERC's hydropower standards in perpetuity, in exchange for the purchaser's agreement to comply with a fish and wildlife management plan.

Southeastern Power Administration

Although the bill requires an open bidding process on the Southeastern Power Administration, it sets the minimum bid at just the level of the net present value of existing project repayment obligations. This minimum bid level does not guarantee that the taxpayers will receive the value of their assets, as in the cases of the sale of the Naval Petroleum Reserves and other Federal assets where the Congress has required an independent financial analysis to set the minimum bid price for those assets.

In addition, the bill goes beyond mere sale of SEPA assets, and requires sale of the associated locks, dams and reservoirs owned by the Army Corps of Engineers. These facilities are operated by the Corps for multiple purposes including navigation, flood control, municipal water supply and recreation. This committee has no jurisdiction over those facilities and no testimony was provided concerning how sale of the facilities to private power companies will affect the public interest in these other project purposes.

The potential loss of multiple-use projects on navigable waterways is compounded by the bill's exemption of the projects after sale from Federal laws relating to the environment and hydropower regulation. Unlike any other private hydropower operator in the country, the purchasers of these projects will receive an automatic FERC license for the next 30 years that sustains only the existing minimum flow of water from the projects for environmental purposes. This license explicitly overrides every other law and regulation that might govern project operations. Indeed, the bill includes a detailed list of environmental laws that may not be considered in license issuance, including the Clean Water Act, the Endangered Species Act, the National Environmental Policy Act and the Federal Land Policy Management Act, and then dismisses as well any other laws that may affect project operations. Such sweeping exemptions, written by a committee that does not even have legislative jurisdiction or expertise over many of the specific issues affected by these exemptions, is not only irresponsible public policy, but wholly extraneous to the purpose of a reconciliation bill.

CONCESSION REFORM

The majority has included a provision purported to represent reform of the Nation's concessions policy for national parks and other public lands. Broad concessions reform, in fact, was approved by the House of Representatives in 1993 by the overwhelming vote of 386–30 in 1994, but was not enacted despite Senate approval of a comparable measure. The version of concessions reform approved by the committee as part of this reconciliation bill is vastly different and seriously fails the test of "reform."

This measure should be termed the "Incumbent Concessionaires Protection Act" because it utterly fails to provide meaningful competition for concession contracts while failing to "score" any meaningful revenues for the reconciliation process.

This concessions policy undermines a primary goal of reform efforts by perpetuating the policy of "possessory interest" which virtually assures that current concessionaires retain the exclusive right to renew their contracts for another 10 to 20 years. The majority bill merely renames the current policy "investment interest" and then extends its provisions to additional Federal agencies beyond the National Park Service that had previously not provided this generous allowance which restricts competition. This new policy would also allow concessionaires to set the rates to be charged to their captive audiences, and gives incumbent concessionaires a preferential right of renewal for one renewal of a contract following enactment.

A major effort to reform concessions policy for the benefit of taxpayers and competing businesses, therefore, would be destroyed by passage of this misguided, anticompetitive and fiscally irresponsible proposal.

NATIONAL FOREST SKI AREAS

The committee-approved bill directs the sale of national forest lands used as ski resorts to monopoly bidders, thereby facilitating the intensive development of these lands. Contrary to sound business practices, this proposal does not require competitive bidding for these sales. In fact, sale of national forest land to ski operators violates the PAYGO provisions of the Omnibus Budget Reconciliation Act of 1990 by increasing direct spending.

The bill contains thoroughly inadequate protection of the public interest once these lands are sold. Lands now used for skiing could be converted to any purpose, and could be resold to any purchaser, including foreign-owned corporations. Public lands now used for skiing could be converted into private ski clubs that exclude the public from admission.

The bill locks in place the ski industry's proposed ski fee schedule that the General Accounting Office has concluded does not provide a fair return to the Federal Government for the use of these valuable assets ("Little Assurance That Fair Market Value Fees Are Being Collected From Ski Areas" GAO/RCED–93–107). This schedule does not generate additional revenue for the Federal Government, raising further questions about the appropriateness of this provision in a reconciliation bill. Indeed, under this industry-developed ski formula, several large ski operators will pay less to taxpayers than they presently do, while several small ski operators will pay more.

GRAZING

Once again, the majority has chosen to address a complex and controversial policy in the course of a reconciliation bill although it unfortunately contains little if anything to assist in the goal of reducing the deficit. Indeed, this grazing proposal misses an important opportunity to increase revenues by charging grazers on Federal lands a fee that more accurately reflects the costs of operating the grazing and range management program.

Despite the professed support for the small rancher who is affected by Federal land management policies, the grazing fee included in this bill provides a windfall for the largest producers. Of the 28,000 permittees on public lands, just 15 percent of the permittees control 58 percent of the forage. On national forest land, just 12 percent of the permittees control 63 percent of the forage. Overall, 25 percent of the permittees control 75 percent of the forage. It should be noted that far from the rugged, individual cattleman portrayed by lobbyists, the corporate beneficiaries who control vast amounts of these permits include so-called "wingtip cowboys" as Metropolitan Life and the J.R. Simplot Co., a national brewery company, a Japanese land and livestock company, and a national oil company, according to the Inspector General of the Department of the Interior. Surely Congress has a right to demand that such interest—who presumably run their own businesses like a business—pay a reasonable rate to taxpayers when they utilize the public rangeland.

By contrast, 75 percent of the permittees graze 500 or less "animal unit months" and could reasonably be termed "small ranchers." The Democratic minority offered an amendment that would have provided continued reduced fees to this large majority of ranchers while eliminating the subsidy for large-scale corporate operations. Unfortunately, the majority rejected this reasonable proposal.

Far from reforming grazing fees or helping to reduce the deficit, the plan passed by the committee would compound the financial losses associated with this heavily subsidized program. Indeed, the Republican majority's own grazing economist testified that if the grazing fee formula included in this bill (identical to that contained in the pending Domenici/Cooley bill) had been in place since 1978, the fee would have been lower in 12 of those 18 years. Indeed, under this fee formula, ranchers will pay less in fees than they did in 1980. In addition, this bill provides a 40-percent reduction in the fee schedule for sheep and goat ranchers by raising the number of sheep or goats that can graze under one AUM from five to seven. So much for deficit reduction.

Moreover, this will allow ranchers who pay low grazing fees to sublease these permits for public lands for a small surcharge and then pocket subleases that pay three to five times more than what they paid to the Federal Government. It is obvious that the authors of this proposal are not opposed to profiting handsomely from the leasing of public rangelands; they merely oppose allowing taxpayers, who own these lands, from realizing a profit although that is the professed goal of this reconciliation bill.

HELIUM PRIVATIZATION

The Helium Privatization section adopted by the committee would terminate the Federal Helium Program. While the ending of the archaic Helium Program is generally supported, the committee unwisely rejected an important amendment offered by Congressman Abercrombie to provide assistance to Federal helium employees such as extending life and health insurance, allowing the use of local employment agencies to help place employees, relocation assistance, and Governmentwide priority rather than just Departmentwide preference in hiring. CBO advised the committee that the amendment would have had no budgetary effect. Even so, the committee refused to provide this additional assistance to the 200-plus employees and their families who will lose their jobs in Amarillo, TX, in the next year. Although there is general agreement that we need to reduce unnecessary functions of Government like the Helium Program, it is unfortunate that the majority was unwilling to provide this assistance to the employees, and their families, who have served their Government and taxpayers for many years.

MINERALS

The mining law of 1872 governs extraction of Federal hard rock minerals such as gold, silver, copper, lead, zinc, and uranium. This 123-year-old law, signed by President Ulysses S. Grant, continues to allow mining claimants to gain fee simple title to both Federal minerals and the land containing them upon payment of a nominal sum ($2.50 or $5 an acre). Just this month, because Congress has failed to reform the 1872 mining law, Interior Secretary Bruce Babbitt signed away as much as $1 billion in public mineral resources for the sum of $275. No royalty will be paid to the taxpayers who own this resource. Last year, a Canadian-based mining corporation, American Barrick, secured rights to $10 billion worth of gold on public lands for about $10,000, also free of royalty payments.

Earlier this year, the House voted overwhelmingly to maintain a moratorium on issuing patents (ownership rights) to lands under the mining law because of widespread concern that taxpayers are being cheated out of hundreds of millions of dollars in royalties and other payments because of an archaic law enacted in the days of Jesse James, the robber barons, and the mineral kings. The House voted to continue that moratorium in hopes that a true reform bill would be enacted by the 104th Congress.

Once again, it appears the special interest mining lobby is succeeding in frustrating the national demand for reform. The House-Senate Conference on the 1996 Interior appropriations bill has acquiesced to the Senate position to remove the moratorium and require expeditious transfer of applied for mineral-rich lands at "fair market value" for the surface without consideration for mineral values. In the case of the Barrick patent, the lessee would have paid only $100,000 for its patents. This strategy is analogous to selling Fort Knox for the value of its roof. Under this agreement, the Department will be forced to expedite approval of the 233 patent applications in the pipeline, and give away as much as $15.5 billion worth of gold and silver for no royalty whatsoever.

The committee's bill essentially retains patenting for the foreseeable future. It would require patent applicants to pay fair market value for the land exclusive of the minerals, and would give claimants 2 years to apply for a patent. Rural Federal land in Nevada, where most of Federal gold production is based, may be worth no more than a few pennies per acre apart from the mineral values.

The bill would require payment of a sliding scale maintenance fee starting at $100 for the first years and ending with $500 for years the claim is held beyond 20 years. But it also allows deduction of up to 75 percent of the costs of developing the claim for mining. In addition, the bill would give away the first year's rental fee. By allowing miners to deduct the costs of mining from their rental fees, the revenues which could be raised are significantly lower than would be collected under the Democrats' proposal. According to CBO, the Republican holding fee would start raising $20 to $30 million per year after 1998; the Democrats alternative would have raised $127 million over 7 years.

The Republican bill would also establish a 3.5-percent net proceeds royalty similar to the Nevada net proceeds minerals severance tax. Nevada's tax is 5 percent with a downward adjustment for profitability. The committee bill, however, permits more than a dozen deductions from gross yield, which is far more generous even than the Nevada tax law permits. Exemptions included above and beyond those allowed by Nevada include engineering costs, costs of support services and support personnel (not defined), environmental compliance, permitting and other administrative costs.

The 3.5-percent royalty would apply only to new claims located after the date of enactment—essentially "grandfathering" over 300,000 existing claims. The bill also provides a very generous 2-year window for applying for a patent, creating an opportunity for miners to get out of paying a royalty. This is significant, especially to budget reconciliation, because it will essentially eliminate any revenue generation within the 7-year timeframe. The CBO scored this provision as raising no funds. The evident purpose of this provision is not to raise funds to meet reconciliation or deficit reduction goals, but rather to pass a sham mining law in order to quell the momentum for responsible reform.

The committee unwisely rejected an amendment offered by Representative Rahall to impose an 8 percent gross income royalty, the most commonly used formula in State and private royalties. This royalty, which was overwhelmingly approved by the House of Representatives in 1993, was scored by CBO as raising $540 million over 7 years, of which $120 million would go to the Western States and $420 million toward deficit reduction.

WARD VALLEY TRANSFER

The bill requires the Secretary of the Interior to transfer unconditionally land from the Bureau of Land Management to the State of California subject only to payment of $500,000 by the State. This action is designed to permit the proposed Ward Valley low level radioactive waste disposal facility to be developed on this site. The action by the committee improperly intervenes at a crucial point in negotiations between the Department and the State over the need to complete additional tests to assure the safety of the site.

In an effort to resolve lingering concerns about potential risks of radioactive contamination of the Colorado River because of a leak at the site, the National Academy of Sciences was asked to convene an expert panel of physicists to review the safety and plans for Ward Valley.

That Academy Panel recommended additional safety tests to determine whether the radioactive tritium that will be stored at the site could migrate and contaminate the Colorado River. The Academy Panel recommended additional monitoring and other measures to protect public health and safety following construction of the Ward Valley facility. The Department of the Interior has been engaged in negotiations with the State of California concerning these conditions—none of which are contained in the committee bill.

The Department and the State reached agreements on most of the points in dispute. However, Governor Wilson refused to include a provision making enforceable the State's obligation to implement the National Academy's recommendations. Governor Wilson's refusal to consent to basic guarantees that the State would in fact do what it promised is the only point holding up an agreement to transfer the land.

The bill ignores the report of the National Academy and the advice of many of our Nation's leading physicists. It ignores the concerns of people living in southern California and elsewhere who have raised reasonable questions about the reliability of the Ward Valley design. It is irresponsible for the committee to interject itself into this complex, ongoing dispute in so cavalier a manner. The majority has demonstrated utter disregard for legitimate scientific concerns that have been raised about this project's safety

Congress should not intrude on these negotiations between Interior and the State that involve highly technical and scientific matters. We instead should encourage both parties to continue their negotiations, and address this subject outside the context of the reconciliation bill to which it is unsuited and totally inappropriate.

FEDERAL OIL AND GAS ROYALTIES

This subtitle is based on a bill introduced in June 1995, by Congressman Calvert. It was the subject of one subcommittee hearing and was found to be seriously flawed by the administration and others. As contained in this bill, the Calvert proposal is seriously defective. It would drastically modify the existing statute of limitations on the collection of royalties due taxpayers, and would create dangerous precedents that will diminish the Government's ability to collect royalties.

Also, the bill would change longstanding Federal policy and require the payment of "interest" to lessees who make overpayments. This change will cost, according to CBO, $60 million over 7 years, hardly a suitable provision for a reconciliation bill intended to reduce, not expand, Federal deficits.

ENDANGERED SPECIES ACT AMENDMENT

The bill would change the commitment of resources provision in the Endangered Species Act [ESA] to specifically exclude any consultation regarding "any agency's periodic or long-term planning activities, mission or policy statements, programmatic documents or general policies, regulations or activities."

Section 7 of the ESA requires that agencies consult with the Fish and Wildlife Service or the National Marine Fisheries Service on actions that they permit or fund. This requirement makes common sense, and serves to prevent agencies from wasting crucial taxpayer dollars to begin a project that may jeopardize federally protected species.

Aimed at overturning recent lawsuits in the Pacific Northwest, the language of this amendment is far too broad and will have uncertain results. Including "mission or policy statements, general policies, regulations and activities" potentially affects everything the agencies do and could effectively destroy the consultation process. In any event, this provision is not scored to yield budget savings, which is the purpose of the bill, and the underlying issue can, and should be addressed more suitably in the reauthorization of the ESA which is currently before the committee.

MISSED OPPORTUNITIES

The committee, by voting against numerous amendments missed opportunities both to raise substantial revenues and reform wasteful resource practices. We mention only two examples.

The majority failed to accept Democratic proposals to end below-cost timber sales by the Forest Service that, according to the Congressional Budget Office, would save $225 million over 5 years. In 1994 alone, when the Forest Service received about $800 million in

Federal timber receipts, it cost the agency $900 million to administer the timber program, a loss of $100 million. In seven of the nine National Forest regions, annual cash receipts from Federal timber sales have consistently failed to cover the Forest Service's annual cash expenditures. In at least three regions, cash expenditures have exceeded cash receipts by a ratio of about 3 to 1, on average, over the past decade.

Beyond the evident financial losses associated with these sales, they have numerous additional disadvantages: they are a wasteful depletion of Federal timber resources, an unwarranted destruction of roadless forests, and interfere with private timber markets.

The committee also rejected an amendment by Congressman Gejdenson to prohibit the payment of double subsidies to farmers who receive Federal subsidized water. As was noted in the debate before the committee, the Federal Government is subsidizing one farmer to grow a crop we are subsidizing other farmers not to grow; and in doing so, we are affecting the price of that crop and may be forced to pay support payments to other farmers. This proposal has been passed by large margins in the House of Representatives on several occasions and it is regrettable that the majority refused to include it in this legislation.

CONCLUSION

We dissent from this bill because it is abusive to the environment, because it deprives the taxpayers of the value of the resources that belong to them, and because it makes a mockery of the reconciliation and legislative processes. These provisions are illustrative of the willingness of the majority to bow to the special interests represented by lobbyists for resource consumptive corporations at the expense of the national interest and the taxpayers. Severe and in many cases irreparable damage will be done to our Treasury, to our Nation's legacy of natural resources, to our fish and wildlife resources and to our public lands by passage of this legislation.

GEORGE MILLER.
NEIL ABERCROMBIE.
MAURICE HINCHEY.
NICK RAHALL.
SAM FARR.
GERRY E. STUDDS.
BRUCE F. VENTO.
DALE E. KILDEE.
FRANK PALLONE, Jr.
SAM GEJDENSON.
PAT WILLIAMS.
ROBERT A. UNDERWOOD.

ADDITIONAL VIEWS OF REPRESENTATIVE DEFAZIO

I concur with the dissenting views offered by my colleagues with two notable exceptions.

With respect to the proposed sale of the Southeastern Power Administration, I disagree both with the majority's proposal and, to a lesser degree, with my colleagues' response. I do not support sale of any of the Federal power marketing administrations, with the possible exception of the tiny Alaska Power Administration and then only under terms that recover the full Federal investment in the facilities in question. The sale of power from federally owned and operated hydroelectric facilities is a legitimate Federal function.

Selling Federal power marketing administrations for a price that simply recovers the Federal investment, as the Clinton administration has proposed, robs future generations of a stream of debt payments that would otherwise be theirs in order to pay for current consumption. On the other hand, selling Federal power marketing administrations for something approaching their value on today's market, as some in the majority propose, amounts to little more than a hidden tax increase on the consumers of federally generated power. To go still further and propose the sale of the associated dams, locks, and reservoirs, while exempting those facilities from Federal environmental laws and other laws governing hydroelectric operations, is wildly irresponsible and outrageous.

On the question of the Federal timber sale program, my colleagues are simply wrong when they seek to enact a blanket prohibition on any and all below cost timber sales.

As a direct result of fire control and other human interventions over the course of many decades, forest stands throughout the West are heavily overstocked. Vast forested areas suffer from disease and pest infestation. Millions of acres of forest are dead or dying. This risk of catastrophic, stand-destroying wildfires is immense. Such fires, when they occur, do far more damage both to forest structure and wildlife habitat than the historic, lower intensity fire regime did. In addition, the forests of the Pacific Northwest contain thousands of acres of second growth Douglas Fir plantations that, without thinning, will take hundreds of years to develop the biological diversity and structural complexity associated with old growth forest ecosystems.

Forest ecologists and silviculturalists agree that salvage and thinning in many of these stands is necessary and desirable. Clearly, the Federal Government will not be able to pay contractors to do the necessary work. Yet much of this work, if offered commercially, will fail the below-cost test.

A below cost sale prohibition has other notable shortcomings, but it clearly has the potential to hinder efforts to restore forest health in the West. Forest management decisions should be made primarily on the basis of ecological need, not measured against a spurious and arbitrary economic standard.

Finally, as my colleagues wrote in their dissenting views, "We dissent from this bill because it is abusive to the environment, because it deprives the taxpayers of the value of the resources that belong to them, and because it makes a mockery of the reconciliation and legislative process." I agree.

PETER DEFAZIO,
Ranking Member,
Subcommittee on Water and Power Resources.

Additional Views of Congressman Robert A. Underwood

COVENANT FUNDING FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

I oppose section 9401 of the budget reconciliation bill approved by the committee which deletes funding for the Commonwealth of the Northern Mariana Islands [CNMI]. It is important to note that the CNMI, which has been a U.S. territory since implementation of the Covenant in 1976, is the only territory not represented by a delegate to Congress. Without CNMI representation in Congress, it is ironic that the committee deleted funding that was negotiated in a process authorized by Congress in the Covenant (Section 902 negotiations).

I have two reasons for objecting to this provision. First, I believe that Congress should honor the commitments made to the CNMI in the Covenant and in the agreement amending the Covenant that was negotiated by the Bush administration in December 1992. There are 5 years remaining in this funding agreement.

Second, I believe that we should consider whether these funds could be reprogrammed to fulfill the commitment to the CNMI and also be used to take care of other needs of the insular territories. This is the approach of S. 638, the Insular Development Act passed by the Senate. While I do not agree with every aspect of S. 638, I believe that this approach merits consideration by this committee.

I recognize the very difficult situation facing this committee with regard to the insular areas, and the pressing needs that must be addressed. We must confront the Rongelap resettlement issue, the capital infrastructure needs of the territories, the compact-impact reimbursement for Guam and the CNMI, and the recovery needs of the Virgin Islands after the devastation of Hurricane Marilyn. All of these are important issues, and all of these are competing priorities for a shrinking pool of Federal resources. I hope we can find a way to do all of this, and fulfill the CNMI Covenant funding within the present constraints.

ARCTIC NATIONAL WILDLIFE REFUGE

While Guam is not directly affected by the development of the Arctic National Wildlife Refuge, the principle involved in this matter is of importance to the people of Guam. I believe that the decision to develop the natural resources of Alaska are best made by the people of Alaska, and I note that the majority of Alaskan Natives support this legislation. Similarly, decisions regarding resource development on Guam should be made by the people of Guam. As Congress makes decisions to balance resource development and environmental concerns, we must give greater weight to the views of those who are directly affected.

Robert A. Underwood.

MINORITY, ADDITIONAL, AND DISSENTING VIEWS TO TITLES XIII AND XIV

DISSENTING VIEWS OF THE DEMOCRATIC MEMBERS OF THE COMMITTEE ON WAYS AND MEANS

The Republicans have finally laid their cards on the table. After waiting many long months to learn how they intend to accomplish their contradictory goals—paying for their $245 billion tax cut and balancing the federal budget in the next seven years—we have finally sat down at the table. They have dealt the cards. They have dealt the American people a losing hand. And, they have dealt a few aces under the table, as well.

We regret this result. we had hoped for a better result, a result that lived up to the Republicans' rhetoric (and rhetoric was all we had during the many months of waiting for substantive policy proposals). We were prepared to collaborate with our Republican colleagues on the Committee to craft a package that would reduce the deficit and be good for the future of our country. We had hoped for a bipartisan result with our Committee colleagues that would have overcome the harshness of the partisanship one hears from some Republican circles these days.

However, that is apparently not to be allowed. The Master Dealer has a different game in mind. A game of high-stakes poker with the wages and work incentives of low- and moderate-income Americans. A game of Russian roulette with the hard-earned and well-deserved pensions of current and future American workers. A game of craps with the fundamental needs of the poor. A game of back-room deals with select Republican special interests. And, a game of charades with the voters and the American public.

Perhaps this is not surprising, but it is regrettable. It is a game that Democrats are unwilling to play with the American public. We, as Democrats, cannot support this bill. We find it objectionable and dangerous. We have no choice but to push our chairs away from this table.

SOME—TOO FEW—BIPARTISAN ACCOMPLISHMENTS

We are proud of the few elements of this bill that resulted from bipartisan collaboration.

The Pickle-Johnson Taxpayer Bill of Rights is a major achievement that reflects more than a decade of bipartisan effort. It reflects legislation approved by the Committee and the Subcommittee on Oversight in recent years, as well as new proposals considered this year. The more-than-thirty provisions will provide needed protections for taxpayers in their dealings with the Internal Revenue Service [IRS], improvements that are long overdue. This legislation will help to make the IRS a more taxpayer-friendly organization, and resolve longstanding problem areas that cause taxpayers unnecessary hassle and frustration. It establishes a position of Taxpayer Advocate with expanded authority; grants the IRS greater authority to abate interest or reverse liens and levies when the IRS is at fault or in error; provides taxpayers with relief in the collection process and in court; and requires the IRS to change its administrative and statutory procedures in significant other ways to make IRS actions less burdensome. These provisions will ensure that taxpayers get a fair shake when dealing with the IRS.

We are proud that these proposals, at the suggestion of Congressman Robert Matsui, Ranking Democrat of the Subcommittee on Oversight, with the agreement of Subcommittee Chairwoman Nancy Johnson, will be named in honor of Congressman J.J. Pickle (D–TX), our retired colleague and former Subcommittee Chairman. This acknowledges his hard work for the better part of a decade, and represents bipartisanship at its best. We wish there were more examples in this bill of such gracious partnership.

Further tax provisions included in this bill with which we, as Democrats, agree and have worked to achieve are: (1) President Clinton's proposals to fight fraud and abuse in the earned income tax credit [EITC] program; (2) the requirement that gain on the redemption of certain corporate stock be recognized immediately if the redemption is treated as a dividend, as in the Seagrams-DuPont transaction; (3) the creation of IRS sanctions to prevent the use of tax-exempt organizations' funds by insiders for private benefit (inurement) and the expansion of public reporting by tax-exempt organizations; and (4) the extension of current authority for the IRS to share taxpayer information with the Department of Veterans Affairs for use in determining eligibility and benefit amounts for its programs.

Although we believe that certain provisions were inappropriately included in the part of the bill relating to tax simplification, we believe that this part as a whole is an improvement in our tax laws and we support it. However, we were distressed that the Department of the Treasury was not accorded its traditional role in the simplification process.

With respect to trade, the bill contains a number of provisions that were developed on a bipartisan basis, mostly in the Subcommittee on Trade. In this regard, the bill reauthorizes the Generalized System of Preferences program through December 31, 1997, and makes modest reforms and technical changes proposed mostly by the Administration that are intended to simplify and improve administration of the program. The bill also makes a number of technical corrections to various U.S. trade laws and includes other miscellaneous trade provisions. In addition, the bill would extend Super 301 through the year 2000. Super 301 requires the U.S. Trade Representative to identify annually trade liberalization priorities and to initiate section 301 investigations on all foreign priority practices so identified. Finally, the bill reauthorizes the trade adjustment assistance programs for workers and firms until September 30, 2000, at which time the programs will terminate, and makes modest reforms to the worker trade adjustment assistance program.

REPUBLICAN CLAIMS OF CORPORATE "REFORM" ARE NOT THE REALITY

The Republicans claims that they are closing corporate loopholes and cracking down on corporate welfare. The truth is they are paying for the reconciliation bill on the backs of moderate-income workers, the poor, and current and future retirees.

The revenue-raising portions of this bill, the so-called Corporate and Other Reforms and the EITC program cuts raise a total of $51.8 billion. Of that total, $35.6 billion—almost 70 percent—is raised in three areas: EITC program cuts; allowing corporations to take assets out of overfunded pension plans; and eventual repeal of the low-income housing credit. Although these last two items are disingenuously billed by Republicans as corporate reforms, they are a direct hit on two vulnerable populations: (1) workers and retirees and (2) the poor.

First, the bill raises taxes by $22 billion on 14 million working families by making several program cuts in the earned income tax credit [EITC]. The Republicans try to argue that they are making minimal refinements to target the program more narrowly. That is grossly misleading. Almost three-quarters of all current recipients will be the targets of Chairman Archer's three proposed cutbacks.

These proposals will make daily life more difficult for families with children, Social Security recipients, surviving widows with children, the disabled, and childless workers who earn less than $10,000 a year. For many of them, this will be a double hardship because they will also be victims of additional cutbacks in welfare.

For two decades, the EITC has enjoyed strong bipartisan support. It has been the most effective work-promoting program of the federal government. Although the Republicans praise the virtues of self-reliance, their actions in this bill will severely reduce work incentives for the segment of the work force that must struggle to maintain a stable work life. Marginal tax rates on wages will go up by at least 2 percentage points. Childless workers, who are among those with the lowest wages, will be cut out entirely. Examples abound, and have been presented in Committee hearings, of workers trying hard to climb into the middle class. They use their EITC to pay their mortgages, their utility bills in winter, and their transportation and child care costs. They are doing everything the Republicans supposedly want them to do. Why are they being targeted? Why this sudden reversal in Republican support for this program?

There is only one reason. The Republicans need cash to pay for their enormous contract With America Tax cuts passed by the House of Representatives earlier this year and included in this reconciliation bill. In order to lavish tax reductions on wealthy investors and corporations, they have cut back significantly on a program that provides a lifeline to low- and moderate-income American wage-earners.

Second, the bill gives corporate executives license to raid retirement funds, that are supposed to be used for the exclusive benefit of their employees, by allowing corporations to remove as much as $40 billion from pension funds. The bill puts no restrictions on the use of these funds—indeed, corporate executives could give themselves bonuses if they wished or build a corporate retreat! This is no hardship for the corporations. This is no loophole closer. It is exactly the opposite—it allows corporate cashflow to be enhanced by using funds that have been set aside during employees' working years to pay their pension checks in the future. It frees up as much as $40 billion that has been dedicated to the benefit of employees and allows it to be used for virtually anything corporate executives decide. What kind of reform is that?

Republicans rejected amendments offered by Democrats to require that employees and retirees be notified in advance when their employing companies plan to remove assets from their pension funds and to require conservative rules for determining whether pensions are actually overfunded. The Republicans' refusal to incorporate these reasonable protections for employees and retirees is evidence of their blatant disregard for ordinary hard-working Americans. It is also proof that one of their highest priorities is pandering to Corporate America.

Permitting employers to withdraw assets from employee pension plans is nothing more than an irresponsible budgetary gimmick that places the pensions of working Americans at risk. It is ironic that at a time when the Republicans pretend to be concerned about the solvency of the Medicare Trust Fund they are endangering the pensions of working Americans for short-term budgetary gains. It is ironic that at a time when the budgetary gains. It is ironic that at a time when the Republicans pretend to be committed to balancing the budget, they are substantially increasing the potential liabilities of the Pension Benefit Guaranty Corporation which must step in and bail out employers when the employers do not have sufficient assets to pay employee pensions.

Our opposition to this proposal can be summarized by paraphrasing Republican Majority Leader Dick Armey's statement to the press on September 12 of this year: We will not stand by and let the Republican majority raid workers; hard-earned pensions. Our message is simple: Keep your paws off the pensions of hard-working ordinary Americans.

Third, the bill would repeal the low-income housing tax credit as of the close of 1997. The low-income housing tax credit has helped more than 800,000 poor families afford a decent place to live. It encourages investment in residential housing. It has helped to revitalize urban and rural neighborhoods and boosted local economic activity. The National Governors' Association has urged Congress to retain the credit as a permanent incentive for the reliable and efficient construction of low-income housing units. The Republicans have not adequately explained why they think this credit is corporate welfare that should be cut, but those hundreds of thousands of families know otherwise. The credit has merely provided a helping hand to those who need it. How can this be characterized as a benefit to Corporate America? Repealing an incentive for investment in housing for the poorest among us is nothing more than a hit-them-when-they're-down attack on America's needy.

The Republicans decry politics as usual. They are guilty of it in this bill. They talk about cutting corporate welfare, but instead they jeopardize the general welfare. They scold about personal responsibility and the work ethic, but they reduce the financial advantages of working for those to whom it means the most. They talk about getting the government out of people's lives, but they raise taxes on 14 million families and interfere in the competitive balance of several industries. They remind us of the importance of family, but they accommodate corporate raiding of the only nest egg many breadwinners are able to accumulate for their families' future security, their pensions.

REPUBLICANS RAISE TAXES ON 14 MILLION WORKING FAMILIES

The reductions in the earned income tax credit EITC will result in tax increases on 14 million families who earn less than $28,500 a year. Four million of them earn less than $10,000 a year. We strenuously oppose this tax increase.

The bill would repeal the EITC for childless workers, require that Social Security benefits be included for purposes of calculating the phaseout of the credit, and increase the rate at which the credit for families with children phases out. All this raises taxes on people who are working—the very thing Republicans have said they want those people to do. It makes no sense to us.

We tried several times to amend the bill in order to lessen the blow on working people. The Republicans rejected each attempt. Our amendments garnered not one single Republican vote in favor of the working class.

Congresswoman Barbara Kennelly offered an amendment to strike all the proposed EITC tax increases, retaining only President Clinton's anti-fraud provisions mentioned above. This would have saved 14 million families from greater hardship than they already suffer. It would have been a vote of confidence, loud and clear, in the American Dream. It would have said to these workers: "We believe in you. We believe that you'll make it. Don't lose your resolve, despite the difficulties. We are willing to help. We are on your side." Not a single Republican was willing to stand up for those 14 million American workers.

Congressman Ben Cardin offered an amendment to restore the current rates at which the EITC phases out. This would have saved families with children from significant tax increases. It would have protected the 60 percent of EITC recipients who have incomes in the phaseout range ($11,630–$28,550) from an aggregate tax increase of $8.7 billion. Congressman Cardin's amendment would have also protected the federal budget. The revenue lost by retaining the current EITC phaseout rates would have been made up by restricting the Contract With America's family tax credit to families with incomes below about $105,000. The Contract tax cuts would provide very large benefits to very wealthy families and individuals: average tax cuts of $11,260 for those fortunate few who have incomes of $200,000 or more. Does it make any sense at all to have families who make less than $28,550—perhaps as little as $11,630—footing the bill so that wealthy families can receive tax breaks that are almost as large as the annual salaries of some of those targeted families? Which group of families needs our help more? Republicans made their choice—they all voted to defeat the amendment.

Congressman Sander Levin offered an amendment to strike the provision of the bill that would require Social Security benefits and other retirement income to be included in the calculation of the phaseout of the EITC. To offset the cost, the amendment would also have prevented the enactment of the neutral cost recovery system, a complex and unpopular new depreciation scheme included in the Contract With America tax cuts. The Republicans may wish to tax the Social Security benefits of two million elderly couples, surviving widows with children, grandparents raising their grandchildren, and the disabled, but Democrats do not. If this tax increase on working Social Security recipients is necessary to pay for a silly depreciation provision in the Contract that benefits Corporate America, then the depreciation scheme is simply not necessary. It is especially offensive to us that the Republicans would combine this tax increase on moderate-income Social Security recipients with a cut in taxes on well-off Social Security beneficiaries. The Republicans apparently saw no injustice or imbalance in their priorities—they all voted down Congressman Levin's amendment.

Congressman Charles Rangel offered an amendment to restore the EITC for childless workers. This amendment also would have been deficit-responsible. It would have replaced the revenue required to restore the credit—about $4 billion—by denying the Contract's family tax credit to upper-income families. After the markup was finished, the Joint Committee on Taxation finally responded to our request for an estimate of what that income level would be. The threshold of the Contract family tax credit could have remained as high as $150,000 and still Congressman Rangel's amendment to restore $175, on average, to childless workers could have been funded. But, Republicans chose to give $500 per child to families with incomes larger than $150,000 rather than give $175 to poor workers. The Republicans have made it clear that workers struggling to remain in the work force can expect no help from them.

The Republicans try to downplay their tax increases as if they were a minimal shaving off the top. Not so. The proposal to increase the phaseout rates, by itself, will affect every taxpayer with income in the phaseout range. That means 9.4 million families with incomes as low as $11,630, 60 percent of all taxpayers who receive the EITC, will be subject to a tax increase. They will have to work that much harder or that much longer to make up the difference in their net pay. Every one of those families has children. Every one of them has a working parent or guardian. Every one of them is worried about its future. Now the Republicans have given them greater reason for worry.

The proposal to include Social Security benefits in the calculation of the phaseout of the EITC will hurt 1.9 million taxpayers. On average, they will lose $642 a year. Four hundred thousand of them will no longer qualify for the maximum benefit. The 1.4 million taxpayers who have children will lose $850 a year. These are not wealthy people. Their annual adjusted gross income averages $9,580 a year. They receive Social Security benefits, so we know they have already been identified as needy or suffering hardship. They are elderly couples, surviving widows with children, grandparents raising their grandchildren, and the disabled. What in the world have these people done to merit the heavy hand of the Republicans falling on them, shrinking their paychecks, taxing their Social Security benefits at a rate of at least 18 percent?

The Republican Members of the Committee and their staffs were unable to provide a policy rationale for taking $4.2 billion away from 4 million childless workers. They simply suggested that money was tight, there is not enough of it to go around. But apparently there is enough to give $63 billion to investors in the form of a capital gains tax cut, as the Republican Contract tax cut does. Apparently there is enough to give $7 billion in family tax credits to those with incomes of more than $100,000 a year. Apparently there is enough to spend $16 billion on a new, complicated depreciation scheme that no one in the business community wants.

This is heartless. This is unfeeling. Raising taxes on working people who have nothing to spare in order to heap excess on those who want for nothing is unworthy. It is not what government should be about. It means taking care of special interests, rather than the public interest.

CORPORATE WELFARE BY ANY OTHER NAME

The Republicans would have the American public believe that they are the party of reform. Their rhetoric is overloaded with promises to purge existing laws and regulations of provisions that are too narrowly targeted and to avoid any preferential treatment for special interests. They characterize a major section of this bill as an attack on corporate welfare in an undisguised attempt to win favor with the American public.

The truth is the Republicans are using this bill to protect Republican special interests, to punish the competitors of Republican special interests, and to deliver directly new special favors for Republican special interests. They have tried to disguise this fact, to characterize it as leveling the playing field, and to claim credit for being tough on corporate welfare. They are misleading the American people and, amazingly, they are doing it with a straight face. The Republicans should be ashamed of themselves for such baldfaced deception.

Protection of the Oil and Gas Industry.—Although there are numerous examples of such Republican favoritism, the most egregious one of all is the unmistakable attempt to protect—indeed, enhance—the competitive position of the oil and gas industry. Most other sectors of the energy industry take a hit in this bill, but the oil and gas industry remains untouched.

The Joint Committee on Taxation's pamphlet on tax expenditures lists five tax preferences specifically designed to encourage the production of fuel from renewable sources or energy conservation. The bill permits one of these provisions to terminate and substantially restricts or phases out three others. The bill does not threaten even one of the six provisions listed that are specifically designed to benefit the oil and gas industry. Indeed, the Republicans seem to go out of their way to eliminate benefits enjoyed by competitors of the oil and gas industry. It increases taxes on those who produce energy from alternative sources: wind, biomass, shale, geopressured brine, and synthetic fuels. It even eliminates provisions designed to provide incentives for energy conservation expenditures by businesses in other sectors of the economy. Any proposal that purports to eliminate unjustified tax benefits should treat competitors equally. This is simply not true of the Republican bill.

There is more than one way to skin a cat—the Republicans may have avoided the direct appearance of dishing out new special tax breaks to the oil and gas industry, but they certainly have enhanced the industry's competitive position by increasing the tax burden on its competitors.

Protection of the Organized Gambling Industry.—Another industry that will enjoy Republican protection as a result of tax increases on its competitors is the commercial gambling industry. Established casinos and other gambling enterprises have had their monopoly status threatened in recent years by the entry into this market by Indian tribes. Tribal-run gambling establishments have siphoned some profits from the more traditional gambling organizations. The bill would subject these tribal earnings to federal income tax, even though Indian tribes have always been considered sovereign nations that are not subject to federal laws of the United States. The constitutional validity of the bill's provision has been questioned. But its economic effect is not in question. It will unambiguously inflict a burden on the competitors of established gambling operations, providing protection to those established operations.

License to Corporations to Raid Employee Pension Funds.—The Internal Revenue Code provides substantial tax incentives to employers to encourage pre-funding of the pensions that they promise to their employees. Contributions by employers to pension trusts are deductible when made and the earnings of those trusts are exempt from tax until distributed. These tax benefits are specifically contingent on the fact that these monies are to be dedicated for the sole benefit of the employees. In general, amounts in these trust funds can be withdrawn by employers only if the plan is terminated and all of the plan liabilities are satisfied through the purchase of annuity contracts.

During the 1980s, it became apparent that the requirement that the funds be used for the exclusive benefit of the employees was not sufficient to prevent employers from withdrawing those funds for their own use. In response to reports that pension fund assets were being used for corporate takeovers and other transactions, the Congress enacted an excise tax on reversions of plan assets to employers. This excise tax was increased in 1990 to strengthen the guarantee that these funds be used to benefit employees.

This Republican bill would permit employers to withdraw assets from employee pension funds for their use. Any assets in excess of 125 percent of the plan's current liability could be withdrawn by the employer and used for any purpose. If the withdrawal is before July 1, 1996, the excise tax enacted in the 1980s would be waived completely. This tax holiday is designed to maximize the nominal revenue gain from this proposal by creating an incentive for employers to withdraw assets promptly. For withdrawals after July 1, 1996, and before December 31, 2000, the bill would reduce the excise tax from a maximum of 50 percent to a mere 6.5 percent. This is less than even the 10-percent additional tax that an individual must pay for premature withdrawals from an Individual Retirement Account.

The PBGC estimates that as much as $100 billion of pension plan assets could be withdrawn if employers take full advantage of the Republican proposal. In making its revenue estimate of this provision, the Joint Committee on Taxation assumed that between $30 and $40 billion of pension fund assets would be withdrawn under this proposal, thus their estimated revenue gain for the government of approximately $10 billion. If their estimates are accurate, the net benefit to corporations under this proposal will be between $20 and $30 billion, money those corporations can pocket. This is purely a voluntary tax paid by corporations for the privilege of withdrawing pension assets: hardly cracking down on corporate loopholes. It should be noted that employers will be willing to pay this voluntary tax only if they dismiss Chairman Archer's prediction that he will succeed in tearing the income tax out by its roots.

During Committee consideration of this proposal, some Republican Members argued that they were freeing up money for useful investment. This argument is fallacious since these monies are already productively invested through stock, bond, or other investments. The only question is who will receive the income earned by these investments, not whether these funds will be productively invested.

Embarrassed by their failure to advance any policy rationale for this proposal during the Committee debate, the Republicans and their staff have now invented one. They contend that permitting employers to withdraw $30 to $40 billion from employee pension funds will actually enhance the security of employee pensions by encouraging greater employer contributions in the future.

We have two responses to this rather astonishing argument. First, if the Republicans really believe that this proposal would have that beneficial effect, why is the proposal temporary? It is temporary because that is the only way it can raise revenue. The only way to disguise this $30 billion gift to corporations as a revenue increase is to make it temporary. Second, the staff in its desperate haste to produce a rationale for this proposal has failed to analyze its own bill. The amount that can be withdrawn under the Committee proposal cannot exceed the overfunding which existed on January 1, 1995. Therefore, this limitation removes any incentive for making larger contributions in the future under the proposal.

Rather than justify their proposal, the Republicans merely argued that it was similar to provisions enacted in the past. This argument also is incorrect. In 1990, a provision was enacted permitting the use of excess pension plan assets for retiree health benefits. This provision was extended in last year's implementing legislation for the Uruguay Round trade agreements. The retiree health provisions are substantially different from the proposal adopted by the Committee for the following reasons:

First, the present-law provision permitting use of excess pension plan assets for retiree health benefits directly benefits the retirees under the plan who also receive retiree health benefits. Technically, it is not even a withdrawal from the plan but is an allocation of plan assets to a retiree health account which is part of the plan.

Second, the present-law provision contains substantial restrictions to ensure continuation of retiree health benefits. The provision adopted by the Committee contains no such restrictions. By permitting withdrawals for any purpose, it removes the incentives for employers to continue to provide retiree health or any other employee benefits.

Third, the amount of money anticipated to be withdrawn under this Republican proposal dwarfs the amount anticipated to be allocated to retiree health accounts. The Joint Committee estimates that between $30 and $40 billion will be removed from pension plans under this Republican proposal. This is probably 20 times the amount that will be allocated to retiree health accounts.

It may be possible to carefully craft a proposal that would permit withdrawal of truly excess assets from pension plans without endangering employee pensions or increasing contingent liabilities of the PBGC. It is clear that the Committee proposal was not so crafted and was simply designed to maximize its revenue gain. Chairman Archer's original Mark would have permitted withdrawals of pension fund assets without regard to the funded status of the plan when the withdrawal would be made. It defined excess pension plan assets by reference to the fund's status on January 1, 1995, without regard to later events. This would have permitted withdrawals from plans overfunded on January 1, 1995, even if those plans were underfunded on the dates of the withdrawals. In response to concerns raised by Congressman Kleczka, Chairman Archer offered an amendment identical to the one that Congressman Kleczka considered proposing. This amendment was adopted even though it cost $1 billion in reduced revenue.

Congressman Ben Cardin offered an amendment in Committee that would have required the use of conservative actuarial assumptions in determining whether there were excess pension assets that could be withdrawn under the provision. Last year, in the implementing legislation for the Uruguay Round trade agreements, Congress required the use of conservative actuarial assumptions by underfunded pension plans. Congress was concerned that then-current actuarial assumptions permitted employers to underfund plans by understating their liabilities. Congressman Cardin's amendment would have required that these conservative assumptions be used for purposes of determining how much may be withdrawn under the Republican bill. The Republican majority brushed off concerns of the Administration that unless conservative actuarial assumptions were used the proposal could substantially increase the potential liabilities of the PBGC. The only argument raised against the amendment was that it would cost revenue. This clearly revealed that the Committee proposal was designed to maximize revenue gain rather than ensure adequate assets for employee pensions.

Congressman Gerald Kleczka offered an amendment in Committee that would have required employers to provide their employees with advance notice before making withdrawals under the Committee bill. Even notification to the employees was rejected by the Republican majority, who argued that it might create ill feeling between employees and employers if the employees were informed that their pension assets were to be used by their employer at the employer's discretion.

The Republicans have constantly argued that assets in excess of 125 percent of a plan's current liability are not necessary to ensure payment of employee pensions. No foundation exists for this assertion. We do not agree with it for the following reasons:

The stock market is at historically high levels. Excess pension funds could disappear in a single day in the case of a market correction. We have all seen stories of substantial losses from derivative transactions. These losses could also rapidly erode excess pension fund assets.

A reduction in interest rates of as little as 1 percentage point together with an asset reduction of 10 percent (through investment performance) reduces the funding ratio from 125 percent funding to 96 percent funding in the typical plan guaranteed by the PBGC.

Use of current liability to measure excess pension fund assets substantially understates the risk to the PBGC. Even a pension plan funded at 125 percent of current liability could, if terminated, result in liability to the PBGC.

The Republicans would have us believe that they have begun a revolution to divorce government from special interests. Their television commercials, their campaign slogans, their sound bites all try to persuade the American public that the Republicans are cleaning up politics. Nothing could be further from the truth. This bill is proof that, public relations jargon aside, at the end of the day when it really counts, the Republicans are even more cozy than ever with their special interests.

REPUBLICANS DENY BASIC HOUSING TO THE NATION'S POOR

The bill would eliminate the low-income housing tax credit (LIHTC) after December 31, 1997. This would jeopardize the future of affordable housing and the revitalization of urban and rural communities. At a time when the need for affordable housing can be seen clearly from the streets of the Nation's capital to the rural areas of this country, the Republicans have targeted the LIHTC for extinction.

This provision was included in the bill by the Republicans under the guise of closing corporate and other loopholes, yet no evidence has ever been presented to substantiate that claim. The credit, which is allowed in annual installments over 10 years for qualifying new construction or substantially rehabilitate low-income housing, is the only federal tax program available for private investment in affordable housing.

The success of the LIHTC program has been praised by many, including Republican Governors. One Governor, in urging that the credit be retained on a permanent basis, stated that the "credit has been an important part of the statewide strategy to help low-income families afford decent housing, thereby reducing their dependence on other costly forms of public assistance." We agree. We believe there is a direct correlation between providing affordable housing to a low-income family and reducing that family's dependency on government handouts. Unfortunately, the Republicans on this Committee have chosen to ignore this nexus in their quest to take from the weakest in our society and give to the most privileged.

The Republicans have justified the elimination of the credit by arguing that this would facilitate a review by the Committee of whether the credit should be modified and/or retained after receiving a report from the General Accounting Office [GAO]. However, the Republicans were hard-pressed to explain why such drastic action was being taken before any report has been received and reviewed by the Committee. This is clearly another example of the Republicans' use of any means to justify their ends.

Since its creation in 1986, the LIHTC has financed more than 800,000 affordable housing units for low-income families. These units would not otherwise have been built; and hundreds of thousands of low-income families would not have received decent, affordable housing. The more than 800,000 units account for all the new housing units for low-income renters since 1986. Yet Committee Republicans voted unanimously to kill the program.

We are convinced that the Republican are aware of the importance of permanence to the continuing success of this program. The National Governors' Association, in urging that the program be retained on a permanent basis, stated that the program was one of the best examples of a public-private partnership and a federal-state partnership. The LIHTC was made permanent in 1993 in response to these very concerns, concerns we know the Republicans are aware of, but have chosen to override.

The revenue raised by this provision, $3.5 billion over seven years, is not critical for the Republicans to meet their budget target. Why then their committed effort to abolish the LIHTC? Except for the fact that this action is consistent with the Republicans' effort to take from the weakest in our society and give to the most privileged, we may never know the true driving force behind their inclusion of this provision.

REPUBLICANS CONCEAL THEIR PLANS FROM THE PUBLIC

Lastly, we feel compelled to note that the process by which this bill was developed was a disappointment at best and an intentional obfuscation at worst. Chairman Archer changed his Mark three times within the first few hours of the markup. It was difficult to be certain which version was current at any given time.

The Joint Committee on Taxation failed to make revenue tables available until the markup began. Even then, the tables did not correspond to the version of the mark that was before the Committee.

Discussion of the effects of the bill's provisions on taxpayers and the economy was not allowed. Questions intended to illuminate the consequences of this legislation were silenced. Are Members of Congress no longer allowed to gain a thorough understanding of what we are voting on? Is the American public to be kept in the dark about what the Republicans are doing? What was Chairman Archer afraid of? What does he wish to hide? The American people deserve better.

SAM GIBBONS.
BARBARA B. KENNELLY.
HAROLD FORD.
ROBERT T. MATSUI.
L.F. PAYNE.
PETE STARK.
GERALD D. KLECZKA.

JIM MCDERMOTT.
C.B. RANGEL.
SANDER M. LEVIN.
JOHN LEWIS.
BENJAMIN L. CARDIN.
RICHARD E. NEAL.
WILLIAM J. COYNE.

DISSENTING VIEWS—GRADUATE EDUCATION

In the section relating to extension of certain expiring tax provisions of the Budget Reconciliation Recommendations, a provision which addressed employer-provided educational assistance was included. Under prior law, an employee's gross income and wages did not include amounts paid or incurred by the employer for educational assistance provided to the employee if such amounts were paid or incurred pursuant to an educational assistance program. This provision expired December 31, 1994.

The proposal in these recommendations would extend the exclusion for educational assistance for taxable years beginning after December 31, 1994 and before January 1, 1998. However, the exclusion does not include graduate education for 1996 and 1997. We are concerned that the exclusion does not include graduate education. The Joint Committee on Taxation has prepared an estimate for including graduate education. Including graduate education for 1996 and 1997 would cost a total of $259 million.

During the mark-up, Chairman Archer offered a substitute amendment which affected the revenue of the total package. Several corporations benefitted. Whereas, the middle class and lower class will suffer. Section 127 has helped many individuals who want to better themselves through education. The amount of revenue saved is not worth the loss that will result from this provision. Education is the key to our future.

SAM GIBBONS.
CHARLES RANGEL.
ANDREW JACOBS, Jr.
ROBERT MATSUI.
BARBARA KENNELLY.
WILLIAM COYNE.
SANDER LEVIN.
BENJAMIN CARDIN.
JIM MCDERMOTT.
JOHN LEWIS.
L.F. PAYNE.
RICHARD NEAL.

DISSENTING VIEWS OF RICHARD E. NEAL—SIMPLIFICATION

In the section relating to tax simplification proposals of Budget Reconciliation Recommendations, I am concerned about the selection process. During the walk through and mark-up process it was not clear what the rationale was for including some provisions and not others. I was under the general belief there would be no retroactive provisions included in the reconciliation tax provisions.

This section included a provision which would modify the FICA tip credit. The proposal clarifies the credit with respect to employee FICA taxes paid on tips by providing that the credit is available whether or not the employee reported the tips on which the employee FICA taxes were paid pursuant to section 6053(a). This provision is retroactive because it includes taxes paid after December 31, 1993.

I have been working on a proposal which would clarify the employment tax status of certain fishermen. Congress has passed this proposal in the past. This proposal is similar to the FICA tip provision and they are both retroactive. The proposal clarifies the definition of employment for fishermen of certain small fishing vessels.

The revenue loss associated with this proposal is small and I have an offset to pay for the proposal. The offset addresses tax compliance for the sale of fish. This offset is noncontroversial.

I urge the Committee on Ways and Means to address the clarification of employment tax status of certain fishermen in a timely manner. All employment tax issues should have been addressed at the same time. One proposal should not have been treated differently than others.

RICHARD E. NEAL, *Member of Congress.*

Additional Dissenting Views

We want to express our opposition to the provision of this bill that would deny the deductibility of interest on loans taken against corporate owned life insurance policies.

This proposal constitutes a retroactive tax increase on all holders of all policies with loans purchased after 1986. Countless companies across the country have made the business decision to purchase these policies. One factor in that decision was the deductibility of interest on policy loans. Now, in this legislation, we have retroactively changed the rules. Without notice and without any opportunity for public hearing, we have told the companies who purchased these policies that they may no longer deduct interest on those loans taken on the cash value of these policies.

One of the basic principles of our corporate tax law is that businesses can borrow against corporate assets and deduct interest on the loan payments. Corporations may borrow against real estate, or equity holdings, or any other assets, and the interest on the loans is deductible. This proposal would, on a comprehensive basis, treat corporate life insurance differently from every other class of corporate assets for this purpose.

We want to emphasize the fact that this provision does not differentiate on the basis of the purpose for which the corporate owned life insurance policy was purchased. None of the proponents of this provision have challenged the legitimacy of key employee policies. No criticism has been made of the policies that many companies use to help offset the rising costs of employee benefit plans. Yet this provision would undermine these important and legitimate purposes.

The proponents of this provision have suggested that they seek to end abusive practices involving corporate owned life insurance. To the extent that there are abusive practices involving corporate owned life insurance, it is the responsibility of this committee to conduct public hearings, look into those abuses, and design legislative remedies. The provision in this bill, however, represents a classic case of throwing the baby out with the bathwater.

Benjamin Cardin.
L.F. Payne.
Barbara Kennelly.
Gerald D. Kleczka.
Richard E. Neal.
William J. Coyne.
Robert T. Matsui.

VI. ADDITIONAL VIEWS

ADDITIONAL VIEWS OF MR. CARDIN AND MR. PORTMAN

Congress has made constant changes in the laws governing private pension plans over the past decade. Unfortunately, the consistent direction of those changes has been to add layers of complexity and expense to the administration of pension plans.

The result of those changes has been to make it more difficult for businesses, and especially small businesses, to maintain an existing pension plan or to create a new one. That is why, over the past 15 years, the percent of small businesses which sponsor pension plans has declined. Twenty-five million Americans work for firms that employ fewer than 25 workers, and less than one out of five of those businesses sponsors a pension plan. This compares with the nearly three out of four employees of companies with more than 1,000 employees who have pension coverage.

This legislation marks a dramatic and long-overdue reversal of the trend toward increasing complexity in federal pension law. Many of these proposals have been before the Congress for several years. In 1992, Congress included many of these provisions in H.R. 11, which passed the House and Senate and was sent to President Bush, only to be vetoed for reasons completely unrelated to the pension reforms.

We greatly appreciate Chairman Archer's leadership in including in his mark many of the most important provisions of H.R. 2037, the Pension Simplification Act of 1995, which we jointly introduced earlier this year. Many of the simplification proposals included in the bill reported by the committee will remove obstacles that prevent businesses from sponsoring pension plans. This will ultimately add to our nation's savings rate and boost the retirement security of our nation's workers.

One of the most significant changes is the design-based safe harbor for 401(k) plans, which will relieve plan sponsors of the expensive and cumbersome nondiscrimination testing while offering workers a strong pension plan. The safe harbor includes an employer match that is modeled after the Federal Thrift Savings plan.

Several of the changes will remove unworkable and unfair provisions from the law. By repealing the family aggregation rules, we will remove a provision that unfairly penalizes workers in the same firm who happen to be family members. We are also very pleased that the bill includes the repeal of section 415(e), which imposes limits on combined plans sponsored by the same employers. The extraordinary complexity of the record-keeping and calculations required by section 415(e) makes it virtually impossible for any plan sponsor to comply with the law.

The bill also includes a number of provisions that were included in H.R. 2037 to address important problems which are still under discussion in the pension community. The new definitions of highly compensated employees will reduce from seven to two the number of criteria that must be considered, and the definition of leased employees would replace the historically performed test with a significant control standard. Both provisions will greatly improve current law, and we are pleased that they are included in the committee bill.

As we have continued to work with the interested groups on these issues, however, additional considerations have come to our attention that suggest the need for further refinements to these two provisions. We hope to work with Chairman Archer as this bill moves through the process to address these concerns.

In addition, further examination should be given to the provision that would require firms to use prior year data rather than current year data in nondiscrimination testing. It has come to our attention that for some firms in cyclical industries, use of prior year data could impose unreasonable limits on plan contributions. This problem could be solved by offering firms an election on the issue of using prior or current year data.

BENJAMIN CARDIN.
ROB PORTMAN.

MINORITY, ADDITIONAL, AND DISSENTING VIEWS— COMMITTEE ON THE BUDGET

MINORITY VIEWS—REPUBLICAN RECONCILIATION—AN EXAMPLE OF MISMANAGEMENT AND EXTREMISM

The Republican reconciliation package contained in this bill is only half-finished but it is 100 percent cruel. In fact, the mismanagement of this process is exceeded only by the mean-spirited nature of the recommendations that did make it through Republican-controlled committees to come before us.

THE PROCESS

The reconciliation legislation considered by the Budget Committee included only one-third of the cuts required by the budget resolution. Mandated cuts in Medicare, welfare, food stamps, child nutrition, commodity programs, and civilian pensions were not in the package. Five of the 12 committees reconciled to make cuts failed to meet their targets and—in fact—two committees did not report any legislation whatsoever. Further, one of those committees, the Agriculture Committee, actually voted down its reconciliation package and rather than go back and try again, it just gave up. Another committee, the Government Reform and Oversight Committee, didn't even try to mark up any product. Rather, their chairman just sent a letter to the Budget Committee as if he had the right to speak for his committee without any committee process.

Although the Ways and Means Committee has jurisdiction over the all-important tax cut which is driving up cuts in all other areas of the budget, it only reported miscellaneous items of tax policy. It chose to abdicate all responsibility for deciding the final structure for the $245 billion tax cut contained in the reconciliation directive. Apparently, it was too painful for that committee to cut back the $354 billion Contract with America tax cut it had passed earlier, so it just walked away from that responsibility.

Since the inception of the reconciliation process, committees have with few exceptions reported legislation to the Budget Committee that met their reconciliation instructions, In 1993, for instance, the Budget Committee considered a reconciliation package that met the budget resolution's instructions and included recommendations from all 13 reconciled committees—and it did this in May. The wholesale breakdown of the process this year is unprecedented.

We are told that none of this is important because the Chairman of the Budget Committee will just introduce a new bill that will make up for all these shortcomings. In other words, he will introduce a bill that will fix: welfare reform, taxes, agriculture, government benefit plans, and Medicare by reference. We are told that the Chairman will be doing this as an agent of the committee. Really?!

Normally, we would not dwell this much on process, but in this case process has become substance. This massive bill will most likely be considered by the House under rules permitting very few Floor amendments. Therefore, it is especially important that all of its provisions be subject to scrutiny, debate, and amendment at the committee level. And provisions that cannot or do not withstand committee scrutiny should not simply be crammed into the reconciliation bill by fiat of the Speaker.

This process is such a total violation of any commitment to openness, fairness, or representative democracy, we must call attention to it. This bill represents a total failure of the new majority in the House of Representatives to meet its obligations under the Budget Act. And, any new bill introduced by the leadership under the name of the Chairman, represents a violation of democratic processes at all levels. And—this is coming from the new leadership that promised openness and honesty in governing.

THE SUBSTANCE

As awful as the process for this package has been its failures are nothing compared to the flaws in the substance. The two largest items contained in this bill involve devastating cuts in health care for the most vulnerable people in our society and tax increases on working people. And, more outrages are likely to be added in areas such as Medicare, welfare, and farm programs when the Republican leadership inserts its additional provisions into the bill. Here, however, we deal only with the provisions that were actually before the Budget Committee.

Medicaid

The Republican Medicaid proposal cuts $182 billion out of the program that is designed to help low-income people receive health care. It represents one of the most backward proposals we have seen in this century. Not only does it take a major step backward in ensuring adequate health care for the poor, the uninsured, and the old in our society; it also takes serious risks with the public health of our nation.

The Republican plan ends the entitlement to Medicaid services for low-income children, elderly, and disabled persons. Under this bill, states would be allowed to establish their own eligibility standards and benefit packages with no requirements that they guarantee coverage to people now protected under the law. At the same time, the resources shared with the states for this purpose are seriously constrained, making it extremely difficult for many states to continue to provide services in the manner required today.

In one of its most cruel features, the bill abolishes the national standard that protects older couples from spousal impoverishment. Under today's rules, no person can be required to use all of his or her income and assets in order to receive Medicaid coverage for a husband or wife in need of nursing home care. Years ago before we had this standard, it was not uncommon for older couples to feel they had to get divorced in order for one partner to receive the help needed to cover the costs of nursing home care. Moving back to that era is hardly an example of pro-family public policy.

Further, the bill abolishes standards that require Medicaid coverage for prenatal care for low-income women, intensive care for newborns, screening and preventive services for school-aged children, and special services for disabled children.

Clearly, this plan places the health care of the 36 million Americans who now receive Medicaid in serious jeopardy. In an era of increasing risks to the public health in general—through higher incidence of infectious diseases such as tuberculosis, AIDS, and pneumonia—it hardly seems good public policy to reduce health care for those most at risk.

Tax increases

In its second most serious substantive piece, the Republican reconciliation plan imposes $36 billion in tax increases on low- and middle-income workers. It does so directly through cuts in the Earned Income Tax Credit for workers; it does so indirectly through sanctioning corporate raids on workers pension funds. And, it eliminates one of the few tax tools that helps communities increase the supply of affordable housing for low-income families.

The Republican plan cuts $23.2 billion out of the Earned Income Tax Credit. This is ad real tax increase on low-income workers. It will hurt four million childless workers who have incomes of less than $9,520 in 1996. It will hurt ten million families with children who have incomes between $11,620 and $25,119. Because the credit goes only to low-income people with earnings, it is reward for working rather than relying on welfare. Cutting the credit is a peculiar policy when moving people off welfare is—and should be—one of our highest priorities. Once again, the new majority has it backwards.

The plan also indulges itself in a very destructive and deceptive change in the tax treatment of corporate pension plans. The bill temporarily removes the excise tax on pension reversions that was enacted in the 1980's to discourage corporate takeovers. This results in a revenue gain as corporations withdraw money from their workers' pension funds and pay corporate income taxes on the withdrawal. While this provision may look like a tax increase on corporations, the increase is only temporary and corporations would not choose to pay the tax unless it were of more benefit to them to get at the pension funds. It has the effect of leaving little margin of safety in many pension funds. Ultimately, this hurts not only workers, but also taxpayers who will have to back up the Pension Benefit Guarantee Corporation which must make good on pension promises if a company pension fund falls short.

The low-income housing credit has helped 800,000 families afford decent housing. This housing assistance is being taken away at the same time other funds appropriated for low-income housing assistance are being cut severely. Clearly, this provision along with the two mentioned above is hardly an example of clamping down on corporate welfare.

CONCLUSION

The reconciliation package contained in this bill falls far short of what needs to be done either to balance the budget or to meet the requirements of the budget act. It falls short in money. It falls short in process. And, most importantly, it falls short of the simple, basic humaneness needed to govern in a pluralistic and complex society.

APPENDIX I—FACT SHEETS ON DETAILS OF THE BILL

HOUSE BUDGET COMMITTEE DEMOCRATIC CAUCUS

Congressman Martin Olav Sabo, Ranking Minority Member
222 O'Neill House Office Building, Washington, DC 20515 • 202-226-7200

October 10, 1995

The Republican Budget Helps the Affluent Hurts The Vulnerable

While the Republican Budget helps the affluent, it hurts low-income workers, poor children, and seniors.

Reductions in the Earned Income Tax Credit result in a tax increase that hurts low-income workers.

Poor children lose entitlement protections under the Republican "welfare reform." They lose health care because funding for Medicaid is slashed and they lose child care and education because family support and discretionary programs are slashed.

In H.R. 4, the Republican Welfare bill, funding for family support and Food Stamps is cut below current law levels by $58 billion over seven years. Mothers with children under age six are expected to find work while funding for child care is cut, and people with minimal skills and work experience are supposed to find jobs while federal funding for training is cut. Meanwhile, states are free to withdraw their funding for family support and Medicaid.

Budget funding for Medicaid falls 30 percent below the current law projection for the year 2002. Budget funding for Medicare falls 23 percent below the current law projection for the year 2002.

Meanwhile, 33 percent of children in America will not benefit from the "Contract with America" childrens' tax credit, because their parents have too little income to qualify.

And to add insult to injury, more than 50 percent of the benefit of the "Contract with America" tax cut goes to the mere 2½ percent of households with incomes over $200,000 per year.

The Republican Budget adds to the survival pressures on those with low incomes.

Just last week, the Census Bureau released data for 1994 showing that the income-gap between the affluent and all other Americans is still large and growing.

The average income – corrected for inflation – of the bottom 80 percent of the population is 7.5 percent below its level in 1989, and the average for the middle fifth is 6.3 percent lower. Meanwhile, the average for those at the top went up.

These new data show a continuation of a decades' long trend of rising income inequality. The poorest 20 percent of households received 3.6 percent of total income, equalling the lowest level measured since 1967. The bottom 40 percent received 12.5 percent of total income, a record low. At the same time, the top 20 percent received 49.1 percent of total national income, a record high.

House Budget Committee Democratic Caucus

Congressman Martin Olav Sabo, Ranking Minority Member
222 O'Neill House Office Building, Washington, DC 20515 • 202-226-7200

October 10, 1995

The 1995 Republican Reconciliation Bill:

The End of Medicaid

The Republican reconciliation bill abolishes the current Medicaid program and replaces it with a capped block grant. States would received a fixed amount of money with very few federal requirements attached. There is no guarantee that this fixed amount of money will be adequate to meet even the most basic health care needs of the low-income people in that state.

- The Republican plan ends the current entitlement to Medicaid services for low-income children, elderly, and disabled persons. Under the bill, states would be allowed to establish their own eligibility standards and benefit packages, with no requirement that they guarantee coverage to any group guaranteed coverage under current law.

- Medicaid now provides basic health care services to 36 million Americans -- including 18 million children, 8 million women, 6 million disabled people, and over 4 million elderly. Under the Republican bill, all these people would be in jeopardy of having their health coverage reduced or eliminated.

- Total funding under the bill is sharply constrained, allowed to grow by only about four percent per year after fiscal year 1997. This is considerably less than the growth needed just to keep up with caseload increases and general inflation.

- By fiscal year 2002, states would receive 30 percent less than the amount they would receive under current law.

- For individual states, the growth rate of federal funding would be determined under a complex formula that allows increases of between two percent and six percent per year. Many states would be allowed annual increases of just two percent.

- Federal aid to the states would no longer respond to changes in state needs. Under the current system, federal assistance rises when the number of people eligible for aid in a state rises. Under the Republican bill, states would no longer receive any extra federal help to cope with either a regional economic downturn or a national recession.

- The bill gives states almost complete discretion in spending upwards of $100 billion per year in federal funds. It abolishes virtually all national standards for state Medicaid programs.

- Federal rules that would be abolished include standards for quality of care in nursing homes.

- The bill also abolishes "spousal impoverishment" rules, which prevent spouses from being required to spend almost all of their income and assets in order to receive Medicaid coverage for care of a husband or wife in a nursing home.

- Further, the bill abolishes standards that require Medicaid coverage for prenatal care for low-income women, intensive care for newborns, screening and preventive services for school-aged children, and specialized services for disabled children, among other things.

HOUSE BUDGET COMMITTEE
DEMOCRATIC CAUCUS

Congressman Martin Olav Sabo, Ranking Minority Member
222 O'Neill House Office Building, Washington, DC 20515 · 202-226-7200

October 11, 1995

Cuts in the Earned Income Tax Credit are Tax Increases on Low-Income Workers

The Ways & Means legislation before the Budget Committee includes a $23.3 billion tax increase on low-income workers.

While the Republican Budget plan helps the affluent, for example, with capital gains tax cuts, it hurts low-income workers, poor children, and low- and moderate-income seniors. Low-income workers are hit with a tax increase as the Earned Income Tax Credit is reduced.

The EITC Tax Increases

The Earned Income Tax Credit (EITC) tax increase hurts 4 million childless workers, who have incomes less than $9,520 in 1996. A childless worker loses up to $324 per year.

The EITC tax increase hurts 10 million families with children, who have incomes of more than $11,620 and less than $25,119 (or more in case of families with two children or more). A family with children loses up to $301 per year.

Because the credit goes only to low-income people with earnings, the credit is a reward for working rather than relying on welfare. Cutting the credit is a peculiar policy to follow when moving people off welfare has become such a high priority.

Nine billion dollars of the EITC tax increase is accounted for by counting untaxed Social Security and pension income when phasing out the credit. Some surviving spouses getting Social Security will lose EITC dollars. The same is true for older people with dependents, including grandparents caring for grandchildren, and for some low-income households with children who have an adult receiving Social Security disability payments. The proposal moves toward counting all income for low-income people, while the "Contract with America" does the opposite for the most affluent senior citizens. For them, the "Contract" reduces the amount of Social Security benefits counted as income.

Only $1.6 billion is accounted for by changes to improve compliance. Social Security numbers will be required on tax returns.

The Misguided Attack on the EITC

The cost of the EITC is not out of control. The program was expanded quite intentionally by legislation enacted in 1986, 1990 and 1993. The EITC has had strong bi-partisan support for years. In 1986, President Reagan called the program the "best anti-poverty, the best pro-family, the best job creation measure to come out of Congress." Presidents Bush and Clinton supported its expansion. After this legislation is fully effective, the program will grow at little more than the rate of inflation and less than other major entitlement programs.

Critics have claimed that their are EITC fraud rates of 35 to 45 percent. These are error rates, not fraud rates. They include cases where people got too little as well as too much. They include cases where only a few dollars too many were claimed. They include cases where taxpayers were confused by the complexity of law, before simplifications were enacted. These figures do not take account of corrective action taken by the IRS.

The error rates cited above came from an unrepresentative sample of EITC returns, those filed electronically. The figures are also out of date. The IRS has since implemented new rules to cut down on fraud, such as stopping refund mills which were exploiting the opportunity to submit returns electronically and get quick refunds. The IRS now checks Social Security numbers before paying refunds. The President has requested further legislation to improve compliance.

In August of this year, the Congressional Budget Office reduced its estimates for EITC losses due to fraud, citing the recent IRS efforts. Over seven years, CBO lowered its estimates for the cost of the EITC by $20 billion, nearly the amount by which the Ways and Means Committee now proposes to cut the EITC.

While it would be best to reduce error rates to zero, the fact is that other parts of tax law have problems too. However, critics of the EITC say nothing, for example, about non-compliance by small corporations and sole proprietors. According to a 1994 GAO report, small corporations report only about 61 percent of the taxes they owe while sole proprietors report about 80 percent.

Some critics have said that the EITC discourages work, citing a study by an economist Edgar Browning. A recent Congressional Research Service review found that this study neglected to account for the beneficial effect of the EITC in moving people into jobs who were previously not working. The study also used a quantitative assumption about womens' sensitivity to income changes that was too high.

Ironically, the Ways & Means proposal increases the rate at which the EITC is taken away as earnings rise. The Ways & Means proposal decreases the reward for work.

HOUSE BUDGET COMMITTEE DEMOCRATIC CAUCUS

Congressman Martin Olav Sabo, Ranking Minority Member
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October 9, 1995

Promise versus Performance: Reducing Corporate Tax Welfare

The Ways & Means legislation before the Budget Committee includes $53 billion in tax increase items. Sixty-nine percent of this comes not from reducing corporate welfare, but from higher taxes on low-income workers, company raids on worker pension plans, and from ending the credit for low-income housing.

What little is left from reducing corporate tax preferences is more than offset by the corporate tax cuts in the "Contract with America." The corporate benefits from just one item in the Contract, elimination of the corporate alternative minimum tax, are larger than the revenues raised from corporate welfare in the new legislation now before the Budget Committee.

The following tax increases comprise sixty-nine percent of the new tax revenues in the Ways and Means Committee Reconciliation package.

- **Earned Income Tax Credit ($23.3 billion tax increase) --**

  The EITC tax increase hurts low-income workers. It hurts 4 million childless workers, who have incomes less than $9,520 in 1996. It hurts 10 million families with children, who have incomes of more than $11,620 and less than $25,119 (or more in case of families with two children or more). A childless worker loses up to $324 and a family with children loses up to $301.

  Because the credit goes only to low-income people with earnings, the credit is a reward for working rather than relying on welfare. Cutting the credit is a peculiar policy when moving people off welfare has become such a high priority.

  $9 billion of the EITC tax increase is accounted for by counting untaxed Social Security and pension income when phasing out the credit. Some surviving spouses getting Social Security will lose EITC dollars. The same is true for older people with dependents, including grandparents caring for grandchildren, and for some low-income households with children who have an adult receiving Social Security disability payments. The proposal moves toward counting all income for low-income people, while the "Contract with America" does the opposite for the most affluent senior citizens. For them, the "Contract" reduces the amount of Social Security benefits counted as income.

Only $1.6 billion is accounted for by changes to improve compliance. Social Security numbers will be required on tax returns.

- **Allowing corporate pension reversions ($9.5 billion in added revenue) --**

Revenue is raised, but only temporarily. This is a change that benefits companies, even though it raises revenue.

There is currently a 50 percent penalty excise tax on reversions that Congress enacted to discourage corporate takeovers. In the 1980's, takeovers were motivated in part by the existence of well-funded pension plans that could be tapped to help finance the takeovers. This legislation suspends the tax for 18 months and then reduces it to 6.5 percent through the year 2000.

Suspension of the excise is clearly a benefit to corporations, not a reduction in "corporate welfare." Corporations would not choose to withdraw funds and pay the income tax unless it was advantageous. When companies withdraw "excess" pension funding, the must pay income tax on these amounts. Income tax is due because the contributions were deducted in earlier years as pension contributions.

The amounts that companies can choose to leave in workers' pension funds leaves little margin of safety. This is a concern not only to workers, but also to taxpayers who will have to backup the Pension Benefit Guarantee Corporation (PBGC). The PBGC must make good on pension promises if the company pension fund is insufficient.

- **Phase-out of low-income housing credit ($3.5 billion in added revenue) --**

The plan eliminates a credit that has helped communities increase the supply of affordable housing to low-income families. The low-income housing credit has helped more than 800,000 low-income families afford decent housing. This assistance is taken away at the same time that funds appropriated for low-income housing assistance are being cut severely.

House Budget Committee Democratic Caucus

Congressman Martin Olav Sabo, Ranking Minority Member
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October 11, 1995

Eliminating the Department of Commerce Is Expensive

Legislation before the Budget Committee to eliminate the Department of Commerce does not cut bureaucracy and streamline the government as its proponents claim. Instead, the plan before the committee creates *new* agencies -- each with its own inspector general, its own public affairs office, and its own personnel office -- and actually *increases* mandatory spending.

Elimination of the Department of Commerce was not part of the reconciliation instructions to the authorizing committees. Rather, the idea to include it in reconciliation was part of a deal in the House to pass the Commerce-Justice-State appropriations bill. In the Senate, much of the legislation to eliminate the Commerce Department would be in violation of the Byrd Rule; only those portions affecting direct spending would be allowed in reconciliation.

The legislation to eliminate the Commerce Department was introduced by Representative Chrysler on June 7th (H.R. 1756). It was referred to eleven committees. However, only six committees marked up legislation and only two committees (Commerce and Transportation) reported their recommendations to the Budget Committee. The other four committees (Government Reform and Oversight, Resources, Science, and Ways and Means) apparently transmitted their recommendations to the Government Reform and Oversight Committee as directed by Chairman Clinger in an August 1 memo.

At that time, Chairman Clinger also said his committee would "coordinate and package the work of each committee on H.R. 1756...and forward this comprehensive package to the Rules Committee for attachment to the reconciliation bill." But the Government Reform Committee never met to report out this legislation. Instead, the majority is working behind closed doors to produce its own version of the bill.

Again, the Republican leadership decided the legislative process cannot withstand the light of day, and as a result the rest of us are left in the dark. Again, the work of the committees will in all likelihood be irrelevant. Rumor has it, for example, that the "Clinger group" will ignore the recommendations of the Transportation Committee and move the Economic Development Administration (EDA) to the Small Business Administration (SBA).

Below are some facts, instead of myths, about H.R. 1756:

- ***Republicans who tout greater efficiency and downsizing are actually creating more government.***

  The legislation, reported by the Commerce and Transportation Committees for inclusion in reconciliation, creates *five* new agencies to do the work one department had done before. They include: a new U.S. Trade Administration; a Patent and Trademark Office Corporation; a Federal Statistics Agency; a Commerce Programs Resolution Agency; and an Office of Economic Development.

  Two more new agencies are created by the Resources and Science Committees whose legislation is not before the Budget Committee. They are a National Marine Resources Administration and a U.S. Science and Technology Administration.

- ***Republican efforts to streamline government have led to a series of conflicting and contradictory provisions.***

  -- While the Commerce Committee eliminates the Economic Development Administration (EDA), the Transportation Committee creates a new independent Office of Economic Development.

  -- While the Science Committee (whose legislation is not before the Budget Committee) creates a new U.S. Science and Technology Administration (USTTA), the Commerce Committee transfers technology programs to a new U.S. Trade Administration.

  -- While the Resources Committee (whose legislation is not before the Budget Committee) creates a new National Marine Resources Administration, the Commerce Committee transfers NOAA to the Agriculture Department and the Science Committee transfers it to the new USTTA.

  -- While the Ways and Means Committee (whose legislation is not before the Budget Committee) and Commerce Committee create a new U.S Trade Administration, the U.S Trade Representative remains a separate Cabinet-level agency in the Ways and Means bill.

  -- While the Commerce Committee creates a new Federal Statistics Agency, the Government Reform Committee (whose legislation is not before the Budget Committee) keeps the Census Bureau at the new Commerce Programs Resolution Agency for up to one year after enactment of the bill. At that time, the bureau automatically would be moved to the Department of Labor if no other legislation were passed.

- ***Eliminating the Commerce Department does not reduce the deficit; rather, it increases direct spending.***

CBO estimates that the Commerce Committee's proposal to eliminate the Commerce Department *costs* $444 million over seven years.

Most of the increased spending results from allowing Patent and Trademark Office (PTO) surcharge fees to be spent without appropriation ($405 million). Also, this provision to allow direct spending of PTO surcharge fees eliminates most of the savings from the Judiciary Committee's reconciliation provisions that extend the fees through 2002. Other mandatory costs result from new borrowing authority given to the new Patent and Trademark Office Corporation ($2 million) and termination costs associated with the immediate elimination of certain agencies and programs ($45 million).

The proposal also results in $13 million in increased receipts from the sale of the National Technical Information Service. CBO assumes no savings from the sale of the laboratories of the National Institute of Standards and Technology (NIST) and the National Telecommunications and Information Administration (NTIA). However, it assumes that selling EDA's loan portfolio results in a cost of $6 million.

Proponents of the legislation will point to potential savings in discretionary appropriations that the bill produces. But these changes in discretionary authorizations do not count for reconciliation since they do not reduce the deficit.

Furthermore, most of these savings do not come from dismantling the Commerce Department but from eliminating and cutting programs -- saving that could be achieved without eliminating the department. The legislation terminates several programs within NOAA, the EDA, the Minority Business Development Administration, the Technology Administration, the Advanced Technology Program (ATP), the Manufacturing Extension Program (MEP), and the U.S. Trade and Tourism Administration.

- ***The GAO analysis used by proponents of H.R. 1756 is very misleading and simplistic.***

This report claims the Commerce Department "shares its missions with at least 71 federal departments, agencies and offices". However, GAO never actually examined each of the Commerce Department missions to calculate this figure. Instead, it determined the budget functions in which the Commerce Department had programs and added up the other departments and agencies in those functions.

Using this methodology, GAO says the Commerce Department, because it has programs in Function 370, shares its missions with such unrelated agencies as the Postal Service, the RTC, the FDIC and eight other deposit insurance entities. Because it has one program in Function 500, it also shares its mission with 20 education-related independent agencies. Finally, this methodology results in counting five departments and agencies more than once.

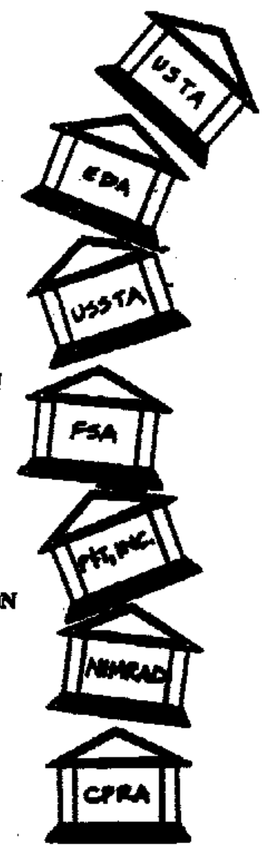
If this methodology is applied to the Agriculture Department, it would share its missions with 131 other departments and agencies. If it were applied to the Treasury Department, it would share its missions with 107 other departments and agencies. If it were applied to the Defense Department, it would share its missions with 65 other departments and agencies. This underscores the absurdity of GAO's methodology.

In conclusion, while there may be a legitimate reason to eliminate a federal department or agency and an intelligent and credible way to do it, the legislation before this committee does not meet these tests. Rather, it makes government more costly, more inefficient, and more cumbersome. It is irresponsible and short-sighted.

THE REPUBLICAN 2-STEP PLAN TO REDUCE BUREAUCRACY

1. Dismantle the Department of Commerce

2. Create NEW Federal Agencies:



U.S. TRADE ADMINISTRATION

OFFICE OF ECONOMIC DEVELOPMENT

U.S. SCIENCE & TECHNOLOGY ADMINISTRATION

FEDERAL STATISTICS AGENCY

PATENT AND TRADEMARK CORPORATION

NATIONAL MARINE RESOURCES ADMINISTRATION

COMMERCE PROGRAMS RESOLUTION AGENCY

IT DOESN'T ADD UP

APPENDIX II—LETTER FROM DEMOCRATIC MEMBERS OF THE COMMITTEE ON AGRICULTURE

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC, October 11, 1995.

Hon. JOHN KASICH,
Chairman, Committee on the Budget,
U.S. House of Representatives.

DEAR MR. CHAIRMAN: We are writing regarding reconciliation instructions directed to the Agriculture Committee under section 105(a) of H. Con. Res 67, the concurrent resolution on the budget for fiscal year 1996.

As you know, the Committee on Agriculture was unable to produce a majority sufficient to report recommendations to the Committee on the Budget as required under the budget resolution. In anticipation of the involvement of you and the Committee on the Budget in providing for the inclusion of an agriculture title in the budget reconciliation bill, we take this opportunity to share our views regarding this important matter.

Under H. Con. Res. 67, the Agriculture Committee is directed to recommend changes in law sufficient to reduce spending on commodity programs by $13.4 billion over the next seven years. The budget resolution also allows the inclusion in reconciliation of a $245 billion tax cut. Our goals are to achieve a balanced budget and to establish a farm policy that preserves the security of our food supply. Since the magnitude of proposed cuts in farm spending threatens severe damage to our nation's food security, we believe providing a quarter of a trillion dollar tax cut is inconsistent with achieving these goals.

Agriculture is the very foundation of our nation's economy. Our basic farm programs have played a significant role in the farmer/government partnership that has been so successful in assuring that our nation has a safe, reliable, and affordable food supply. Reducing Federal spending on farm programs by $13.4 billion will threaten the economic viability of American agriculture and thereby endanger our food security.

To take such an enormous risk with our food production system in order to provide a tax cut is a reckless approach to fiscal policy.

When Democrats were in the majority in the House, the Committee on Agriculture never failed to meet its budget reconciliation directives. From 1981 from 1993, the Committee made changes in agricultural programs that reduced Federal spending by over $50 billion. In fact, agricultural commodity programs comprise the only significant category of entitlements that has undergone actual reductions in outlays over the period.

Agriculture will continue to share in efforts to eliminate the budget deficit. During the Committee on Agriculture's day-long deliberations of reconciliation legislation on September 20, 1995, we offered a substitute amendment for the matter laid before the Committee of Chairman Roberts. If adopted, our proposal would reduce farm program spending by $4.4 billion. This amount is a significant proportion of total commodity program spending and we feel it is a reduction appropriate to achieve a balanced budget without drastically undermining the viability of our nation's rural economy. Our amendment was defeated in the Committee by a vote of 22–25.

The Committee also considered two other major alternatives that would have achieved savings of $13.4 billion. The base text before the Committee consisted of the Freedom to Farm Act and other changes proposed by Chairman Roberts. The Roberts proposal would eliminate the basic structure of farm commodity programs, eliminate milk price support and marketing other programs, and make annual payments available to past recipients of farm program funds. Payment amounts would be independent of market prices. The other alternative was offered by Representatives Emerson and Combest. The Emerson/Combest plan would have achieved savings by reducing the amount of a farmer's acreage on which farm commodity program payments are made but would have largely left the basic structure of commodity programs in place. The Emerson/Combest proposal was defeated by a vote of 23–26. The base text presented by Chairman Roberts was defeated by a vote 22–27.

During Committee deliberations on September 20, we raised concerns regarding a number of matters. First, we expressed our concern that the magnitude of the reductions on which the Committee was being asked to vote were imprudently large and should not be made in order to provide a tax cut.

Second, we voiced our concern that very little information was available to the Committee regarding the impact of the Freedom of Farm Act. Up to that time and until today, the Committee on Agriculture has not held a single hearing to obtain the views of farmers, analysts, or consumers regarding what the impact might be of this dramatic change in farm policy. We feel that all Members of the House should be aware of the lack of available information.

Finally, we expressed our concern regarding a letter to Chairman Roberts from Speaker Gingrich, Republican Leader Armey, and Republican Whip DeLay stating that they would take it upon themselves to force inclusion of the Freedom to Farm Act in the reconciliation bill regardless of any action taken by a majority of the members of the Committee on Agriculture. We feel that this letter represents a profound repudiation of the Congressional committee system and a dangerous precedent with severe negative consequences for the future of our nation's food production system.

The paralysis of the Agriculture Committee with regard to budget reconciliation is a signal that should not be ignored. The deep divisions in our Committee's membership are a harbinger of broader discord regarding the fiscal priorities being set by the Congress.

We take this opportunity to invite you and your colleagues on the Budget Committee to begin now to redirect those priorities. At this time, Americans need a balanced budget—not a $245 billion tax cut. Our nation's well-being requires that we preserve the farmer/government partnership that has been so successful in ensuring the reliability of our food supply. Finally, in order to actually achieve the balanced budget which our people now demand, we must begin immediately to come together and address these concerns.

Sincerely,

E DE LA GARZA.

CHARLIE STENHOLM.
COLLIN C. PETERSON.
BENNIE G. THOMPSON.
TIM HOLDEN.
CAL DOOLEY.
JOHN BALDACCI.
GEORGE E. BROWN, Jr.
CYNTHIA MCKINNEY.
EARL POMEROY.
ED PASTOR.
KAREN L. THURMAN.
SAM FARR.
CHARLIE ROSE.
TIM JOHNSON.
SANFORD D. BISHOP, Jr.
DAVID MINGE.
HAROLD L. VOLKMER.
EARL F. HILLIARD.
GARY A. CONDIT.
SCOTTY BAESLER.
EVA M. CLAYTON.
MARTIN O. SABO.
HARRY JOHNSTON.
LOUISE SLAUGHTER.
ALAN MOLLOHAN.
WILLIAM J. COYNE.
JERRY F. COSTELLO.
PATSY T. MINK.
LYNN WOOLSEY.
CARRIE P. MEEK.
WILLIAM ORTON.
GLEN BROWDER.
LUCILLE ROYBAL-ALLARD.

DISSENTING VIEWS—AGRICULTURE

A farm bill, as its name would indicate, is supposed to be about farm policy. It is meant to be about how to make our farm programs work better for American farmers and consumers, so that the nation can continue to enjoy the same top-quality, rock-bottom priced food we have been enjoying for more than 50 years.

But from the outset, this farm bill debate has had absolutely nothing to do with farm policy, and everything to do with wringing $13.4 billion out of agriculture programs in order to pay for a tax cut that will primarily benefit the most privileged among us.

There was not one hearing held on the 1995 farm bill. Not one. The Freedom to Farm Act—which effectively spells the end of the farm program as we know it—was brought to a Committee vote without a speck of input from the farmers who would be most severely impacted.

The House Agriculture Committee rejected this bill. A Republican Leadership memo was circulated, detailing the brutal sanctions that would be levied against Republican Ag Committee members who dissented. Still, the ag experts in Congress knew that trying to craft a farm bill with a $13 billion cut is like trying to make a shirt from a handkerchief. There just isn't enough material to go around.

The Leadership is undeterred by this setback. Now the Budget Committee Chairman—not even the Budget Committee—will do what those who represent rural America could not and would not do. This was a Gingrich plan from the beginning—now all pretenses have been dropped.

There has been a stark contrast over the past eight years between agricultural spending and total federal spending. Since 1986, Commodity Credit Corporation (CCC) spending has been reduced by 60 percent, while total federal spending increased nearly 50 percent. The Congressional Budget Office (CBO) baseline projects CCC will decline another 20 percent by 1998 and stay at that level until 2002, while all federal spending will continue its upward spiral, rising another 50 percent by 2002.

It is further projected that extensive reorganization of USDA will save as much as $4.1 billion through fiscal year 1999 as more than 1,200 field offices are closed, over 13,000 employees terminated and 43 agencies consolidated into 29.

If all federal spending had followed the pattern of agricultural spending over the past eight years, the federal budget would be in a very substantial surplus position.

Under the recent Uruguay Round of GATT Agreement, the U.S. along with other countries is required to reduce its support for domestic farm programs by 20 percent by the year 2000 from the 1986–88 base period. However, the U.S. has already more than achieved these reductions. To make further reductions in such programs without requiring similar corresponding reduction by the European Union (EU) and other foreign competitors would be unfair to U.S. farmers.

History has shown that our foreign competitors will utilize every possible resource to maintain and expand their share of the world market. The EU, for example, continues to significantly outspend the U.S. in terms of its support for agriculture and in competing for foreign markets. In 1994, outlays for domestic farm programs by the EU amounted to more than $30 billion—nearly three times the U.S. level of outlays.

U.S. agriculture currently faces a subsidy disadvantage. Further cuts in U.S. agriculture spending will worsen the situation: large, disproportionate cuts will be devastating. Not only will our farmers be disadvantaged, but American consumers will share in their loss. American jobs are also at stake. Our agriculture and food industries alone employ one out of every six Americans and nearly one million U.S. citizens depend on agricultural exports for their jobs.

The fundamental objective of domestic farm subsidies is to compensate farmers at a level sufficient to attract financing for what, by nature, is a high risk investment, yet allow agricultural products to be sold at lower market prices. The U.S. farm policy is offset by EU subsidies, the extent to which the global system of agriculture subsidies buys down consumer prices. The inescapable conclusion is that these relationships bear some relation to comparative production costs in the U.S. and the EU. If agricultural products from the U.S. the EU—and virtually every other exporting nation—were marketed at prices sufficiently to fully cover production costs and provide a reasonable return on a risky investment, retail prices would be much higher!

The record of federal spending for agricultural programs and the return on taxpayers' investment should be held up as a model for other budget items, not singled out for disproportionate cuts. We do not object to the principle of requiring justification for federal spending. However, we do object to having agriculture singled out for what constitutes rebuttable presumption that its programs are either not justified or should take bigger cuts than other budget items, especially when the Agriculture Committee could not justify the policy behind the cuts.

It is ridiculous to argue that a $13.4 billion cut in farm programs will allow farmers in the United States to be competitive in the world market. It is simply impossible to build an adequate farm program given the amount of disproportionate cuts that the Republican Budget Committee has directed toward agriculture.

The policy surrounding the 1995 farm bill is seriously flawed. There has been no discussion at the Agriculture committee level and zero input from the very capable farmers in this great country. The Freedom to Farm Act, which cuts $13.4 billion from agriculture spending, severs the link between price supports to farmers and the market prices they receive for their crops. The safety net has been removed and the risk of farming has been piled upon the shoulders of America's Heartland.

The result is clear, when prices are high, farmers will continue to receive from payments—making good times even better. Of course, the good times of strong market prices aren't the problem. The problem is when prices fall to levels where the amounts farmers are paid for their crops don't cover the cost of growing them. Providing help during the bad times of low market prices should be the major goal of farm programs, yet under the Freedom to Farm Act, this goal is seriously overlooked and the $13.4 billion cut to agriculture eliminates the price support safety net for farmers.

The Republican plan for agriculture produces the curious result of paying farmers when times are good and when help is generally not needed; it then turns it back on farmers when prices collapse and when farmers are unable to cover their costs of production.

In our view, this government ought to help the American farmer when times are bad and provide less assistance when times are good.

EARL POMEROY.
CHARLES STENHOLM.

ADDITIONAL VIEWS—MEDICAID, HON. EARL POMEROY

I remain deeply concerned over the deep and debilitating cuts this budget makes in the Medicaid program. While I strongly believe that Medicaid must be reformed, regulations streamlined and spending restrained, the $182 billion cut proposed in this budget is reckless and irresponsible. If these cuts are enacted, it has been estimated that 1.7 million seniors will be denied long-term care benefits and an additional 7 million children will be without health insurance.

In addition to the enormous cut in funding, the Medicaid plan reported by the Commerce Committee repeals many vital federal protections, including nursing home standards, guarantees of coverage for poor pregnant women, their children, and the disabled, as well as guarantees of adequate payments for rural hospitals and health clinics. Among the most disturbing provisions of the Commerce Committee plan is the repeal of the federal protection against the impoverishment of seniors whose spouse requires nursing home care and relies on Medicaid.

During Committee markup, I offered a motion to direct the Chairman to request, on behalf of the Committee, that the rule for consideration of the Omnibus Budget Reconciliation Act (OBRA) of 1995 provide for an amendment to restore current spousal impoverishment protections.

At that time, Rep. Shays requested that I withdraw my motion in exchange for his personal assurance to work with me on a bipartisan basis to reinstate the federal spousal impoverishment protection. Rep. Shays stated that he would actively lobby his Republican colleagues to restore the spousal impoverishment protections in the Chairman's mark of OBRA 1995. If this effort proved unsuccessful, Rep. Shays further promised to go with me to the Rules Committee to request that my amendment be made in order. Based on this commitment, I agreed to withdraw my motion.

I look forward to working with Rep. Shays to restore this important federal protection.

EARL POMEROY.

DISSENTING VIEWS—PMA SALE

The Budget Reconciliation Bill includes the Resources Committee's recommendation to sell the Southeastern Power Agency and all the Army Corps of Engineers' locks, dams, reservoirs, electrical equipment and associated facilities, and real property around the reservoirs.

On its face, the Resources Committee's proposal is absurd. To sell off all the Army Corps of Engineers facilities, the assumption is that the private purchaser would take over all operations currently underway at these facilities. The Corps of Engineers must carefully balance the competing interests of navigation, flood control, recreation and hydropower to determine water levels, drainage and storage. Often the needs for one purpose are in direct odds with another. Under the Resources Committee proposal, hydropower—never a primary purpose of these projects—would become king.

Under this legislative package, we are left to assume that the majority believes deregulation is good at all costs—even if it means turning over the operation of flood control and navigation projects to a private entity. We are left to believe that the same private company driven by the need to make money from hydropower would carefully balance the public interest for flood control, navigation, recreation and domestic water supply—functions where revenue is unlikely. It may not be clear to the majority, but in this case, there is a vital role for the federal government in the operation of these projects.

In its wisdom, the Transportation and Infrastructure Committee prohibited the sale of any Army Corps of Engineers facilities in its reconciliation legislation presented to this Committee. The two positions reported from the Budget Committee are in direct contradiction to one another. The CBO estimates that enacting both of these proposals—and therefore selling only the right to market SEPA power—would not result in any revenues from the sale. What's more, the analysis by the CBO indicates that selling SEPA would raise electric rates—by an amazing 25 to 75 percent.

This legislative package leaves many questions unanswered. But one thing remains clear—the sale of Power Marketing Agencies will not save the government money, but it will lead to increased electric rates for millions of Americans.

EARL POMEROY.
HARRY JOHNSTON.
GLEN BROWDER.

DISSENTING VIEWS OF REPRESENTATIVE JERRY F. COSTELLO

The process of this reconciliation bill is such that I have not witnessed during my tenure on the Budget Committee. It is disgraceful the committee did not meet their reconciliation instructions as directed under the budget resolution. How can we have meaningful debate on the consolidation of the budget blueprint if more than half of the required spending and revenue changes from the committees have not been developed and submitted to the Budget Committee? This process is an outrage! The markup of the budget reconciliation bill should have been postponed until all spending measures were completed and received by this committee.

While I was thoroughly disappointed with the process of reporting the budget reconciliation legislation, I also disagree with several parts of the package. This month, the Census Bureau released data for 1994 showing the income-gap between the affluent and all other Americans is large and still growing. I am distressed that the Leadership's agenda is to reinforce this growing disparity in economic equality. The $245 billion tax cut will benefit primarily wealthy Americans. More than fifty percent of the benefit of the tax cut will go to the less than three percent of households with incomes over $200,000. We must get our fiscal house in order before we dismantle critical programs to pay for a tax cut. I fully support a tax cut for American taxpayers; however, such relief should come after we reach a balanced budget. A tax cut that is financed on the backs of the elderly, poor and vulnerable in our society will not benefit our nation. It is not good economic practice and it is clearly harmful public policy.

Additionally, I am concerned about a provision adopted by the Ways and Means Committee during consideration of their spending legislation regarding retiree health benefits. The Coal Industry Retiree Health Benefit Act of 1992, enacted with bipartisan support and signed into law by President Bush, guarantees lifetime medical coverage for over 100,000 retired coal miners and their survivors and dependents—workers who were promised health coverage in a series of collective bargaining agreements dating back to 1950. The Coal Act of 1992 has helped stabilize the industry while securing earned benefits for individuals whose labor fueled the economic growth of this nation.

Unfortunately, the Ways and Means Committee's action to reverse this progress threatens both the future health care of retirees and the competitive balance in the coal industry. The Committee's legislation shifts the responsibility for all premium payments back to the small number of companies that paid prior to the passage of the Coal Act. In most cases, this shift means an increase in premium payments for such companies by as much as 60 percent. I believe this action is unfair to the thousands of retirees and their families as well as inequitable to the coal industry.

JERRY F. COSTELLO.

DISSENTING VIEWS OF REPRESENTATIVE LOUISE SLAUGHTER

The Budget Reconciliation Act as reported out this Committee is seriously flawed and a major assault on working families, children, and the disabled and senior citizens.

I am deeply concerned about the radical changes being made to Medicaid. Ending the entitlement status of this program seriously jeopardizes health care for 36 million Americans, including 18 million children, 8 million women, 6 million disabled and 4 million senior citizens. If the States simply runs out of money, will senior citizens be thrown out of nursing homes? Will pregnant women no longer receive coverage for the remaining months of their pregnancy? Or will States be forced to raise taxes? All of these events are possible under the Medicaid changes called for in the Budget Reconciliation Act. By fiscal year 2002, states will receive 30 percent less than the amount that they would now receive under current law. Any effort to expand coverage for the growing number of low-income children living in poverty or the rapidly increasing elderly population will be impossible.

The simple reductions alone are frightening, however, the proposed changes go much further. The plan contained in this Budget Reconciliation Act will eliminate eligibility standards, basic benefit packages and there is no requirement that the States guarantee coverage to the disabled or pregnant women. Uniform eligibility and benefit requirements guarantees that health care does not become an accident of birth.

The provisions calling for the dismantling of the Department of Commerce are also flawed and misguided. Not only Committees acted on the comprehensive dismantling proposal? Despite the fact that the legislation was referred to 6 different Committees, only two reported their reconciliation recommendations back to the Budget Committee. The remaining provisions will simply be added, at a later date. The dismantling will save nothing and has little budgetary impact as CBO's analysis was based on authorized levels, not outlays and did not reflect reforms and reductions already undertaken at Commerce. The bill eliminates one agency and creates at least 8 separate agencies. What this dismantling legislation will do is jeopardize our ability to effectively compete in a global economy. American business has been dealt a significant blow in the Budget Reconciliation Act.

LOUISE SLAUGHTER.

DISSENTING VIEWS OF CARRIE P. MEEK

We all know that cutting the Federal budget deficit is painful, but we also all know that most of the cuts in the bill reported by the Committee on the Budget fall on low income Americans. The Committee approved $221 billion in cuts in entitlements, and $192 billion of these—87 percent—are in two Federal programs that help poor and low income Americans: Medicaid and student loans.

The Committee also approved $53 billion in increased taxes, and $27 billion—51 percent—are reductions in the earned income tax credit for working Americans and low-income housing credits.

Why are poor Americans being asked to shoulder most of the pain in balancing the Federal budget? The answer is that they are a convenient target. Poor people can't afford to hire lobbyists to protect their interests.

Why are such huge cuts needed in programs to help the poor? Not to balance the budget. The answer is because the Republican majority wants to give a $245 billion tax break to wealthy Americans.

MEDICAID

The Committee on the Budget approved the Committee on Commerce's decision to establish Federal block grants to the States to replace the current Medicaid program. I oppose these block grants for many reasons. For example, what will happen to health care for the poor if a State miscalculates and runs out of Medicaid money before the end of the year? Will we stop vaccinating children in November and December?

But opponents and supporters of these block grants both agree on the need for a fair formula to allocate Medicaid money among the States.

The House Commerce Committee's formula does some strange things as it distributes the $182 billion in cuts among the 50 States. For example, under the Commerce Committee's formula New Hampshire and Missouri actually get more money than they would under current law. Yet each of the other 48 States gets considerably less money than they would under current law. My own state of Florida, for example, faces a cut of 26 percent over seven years under the Commerce Committee's formula.

The Republicans tell us that they are merely slowing the rate of growth of Medicaid. But under the Commerce Committee's formula Florida will get the same amount of Medicaid money in 1996 that it is getting this year despite the growing numbers of Floridians who need Medicaid services. That's not fair.

Florida already has one of the lowest per patient Medicaid costs of any State in the country. We have already squeezed down our Medicaid costs, unlike many other States. But the need for Medicaid continues to grow—not from illegal immigration from the South, but from legal immigration from the northern states. The House Commerce Committee's formula would make Florida suffer because of its Medicaid efficiency, and because it is the destination of choice for many Americans.

The formula approved by the Commerce Committee is not a fair one. Let me quote from the recent op ed piece in the Miami Herald supporting Medicaid block grants. The author is Jeb Bush, the son of President George Bush. Jeb Bush was the Republican candidate for governor of Florida. He says that "States—such as Florida—that have the fastest growing welfare and Medicaid population will receive disproportionately less in the out years, creating a serious budget crises in those States." Jeb Bush goes on to say that "a bipartisan effort needs to be made to change the allocation formula."

Despite this plea, every Republican on the Budget Committee opposed my motion to replace the Commerce Committee's allocation formula with the one approved by the Senate Committee on Finance.

Both the House Commerce Committee's formula and the Senate Finance Committee's formula cut $182 billion in Medicaid from the amount the States would receive under current law. The Senate formula, however, distributes the remaining $772 billion in Medicaid funds more fairly.

A major reason for the unfair results in the House Commerce Committee's formula is that it arbitrarily uses 1994 as its base year. The Senate Finance Committee acted after the House Commerce Committee and corrected the inequities in its formula. The Senate Finance Committee's formula permits a State to use either 1994 or 1995 as its base year. The accompanying table show how much money each State would get under the two formulas.

MEDICAID PAYMENTS TO STATES, 1996-2002

in $ billion

	CURRENT	HOUSE PLAN	HOUSE CUT	SENATE PLAN	SENATE CUT
STATE	(1)	(2)	(3)	(4)	(5)
ALABAMA	13.8	12.7	1.1	11.2	2.6
ALASKA	2.0	1.4	0.6	1.6	0.4
ARIZONA	12.9	11.6	1.3	10.4	2.5
ARKANSAS	11.1	8.1	3.0	8.2	2.9
CALIFORNIA	95.7	77.0	18.7	81.9	13.8
COLORADO	8.2	6.2	2.0	6.9	1.3
CONNECTICUT	13.0	10.8	2.2	9.4	3.6
DELEWARE	1.7	1.3	0.4	1.6	0.1
D.C.	4.5	3.5	1.0	3.8	0.7
FLORIDA	40.7	30.2	10.5	31.8	8.9
GEORGIA	26.1	20.3	5.8	20.1	6.0
HAWAII	2.7	2.3	0.4	2.5	0.2
IDAHO	2.9	2.4	0.5	2.4	0.5
ILLINOIS	33.2	27.1	6.1	30.3	2.9
INDIANA	23.1	15.8	7.3	14.5	8.6
IOWA	7.8	6.9	0.9	6.7	1.1
KANSAS	6.0	5.8	0.2	5.3	0.7
KENTUCKY	18.4	13.4	5.0	13.4	5.0
LOUISIANA	34.0	28.7	5.3	18.6	15.4
MAINE	6.0	5.1	0.9	5.1	0.9
MARYLAND	13.5	11.0	2.5	11.9	1.6
MASSACHUSETTS	25.5	21.3	4.2	19.9	5.6

	CURRENT	HOUSE PLAN	HOUSE CUT	SENATE PLAN	SENATE CUT
MICHIGAN	32.2	27.9	4.3	27.5	4.7
MINNESOTA	14.7	12.6	2.1	13.6	1.1
MISSISSIPPI	12.6	10.7	1.9	11.4	1.2
MISSOURI	14.9	15.2	+(0.3)	12.8	2.1
MONTANA	3.4	2.5	0.9	2.5	0.9
NEBRASKA	4.4	3.5	0.9	3.8	0.6
NEVADA	2.9	2.2	0.7	2.1	0.8
NEW HAMPSHIRE	3.7	4.2	+(0.5)	2.6	1.1
NEW JERSEY	28.0	21.0	7.0	20.9	7.1
NEW MEXICO	6.1	5.2	0.9	5.5	0.6
NEW YORK	119.5	94.9	24.6	98.1	21.4
NORTH CAROLINA	29.0	20.4	8.6	20.7	8.3
NORTH DAKOTA	2.5	2.0	0.5	2.0	0.5
OHIO	40.6	32.6	8.0	33.9	6.7
OKLAHOMA	11.1	7.8	3.3	7.7	3.4
OREGON	8.9	7.3	1.6	8.8	0.1
PENNSYLVANIA	38.4	35.3	3.1	36.0	2.4
RHODE ISLAND	5.5	3.8	1.7	4.3	1.2
SOUTH CAROLINA	15.3	13.7	1.6	12.3	3.0
SOUTH DAKOTA	2.4	2.0	0.4	2.1	0.3
TENNESSEE	24.6	18.2	6.4	20.4	4.2
TEXAS	61.2	54.2	7.0	49.0	12.2
UTAH	5.1	4.0	1.1	4.1	1.0
VERMONT	2.0	1.6	0.4	1.8	0.2
VIRGINIA	13.0	9.7	3.3	9.9	3.1
WASHINGTON	18.2	12.8	5.4	12.6	5.6
WEST VIRGINIA	13.7	9.3	4.4	9.1	4.6
WISCONSIN	16.5	13.5	3.0	13.8	2.7
WYOMING	1.3	1.0	0.3	1.0	0.3
TOTAL	954	772	182	768	186

*Sources: Department of Health and Human Services, GAO, and Senate Finance Committee

I note that in May this Committee's own report on the budget resolution used 1995—not 1994—as the base year in its illustration of how a Medicaid block grant program might work.

EARNED INCOME TAX CREDIT

I strongly oppose the Republican plan to increase income taxes on America's working poor to help pay for a cut in income taxes for the wealthy.

The Committee approved the proposal by the Committee on Ways and Means to change the Earned Income Tax Credit (EITC) so as to raise income taxes on some workers by $23 billion over the next seven years. Few of us can truly comprehend what an income tax increase of $23 billion means.

The Chairman of the Committee on Ways and Means justified the changes in the EITC by arguing—Simply put, the EITC is going to people with incomes that are too high. Let's look at his argument from the point of view of an individual tax payer.

Consider a single person with no children now earning $8,200 a year, or about $4 an hour. That person now pays a Federal income tax of $139. Under the Republican plan his annual income tax will increase by $101, to $240 a year. That's because the EITC of $101 he now receives will be eliminated under the Republican plan.

Consider also a single woman with one child who now earns $20,000 a year. She now pays a Federal income tax of $533. Under the Republican plan her annual Federal income tax will increase by $169, as her earned income tax credit will fall by $169.

Has the Republican majority already forgotten the promise it made on January 4, 1995 when it changed the Rules of the House? House Rule XXI(5)(c) says that no bill carrying a Federal income tax rate increase shall be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting.

Will the Republican leadership hide behind a legal subterfuge when this bill comes to the floor and decide that only a majority vote—not a three-fifth's vote—is needed to pass this bill? The people of this country were told in January by the Republicans that it is too easy and too tempting to raise income taxes. Make it hard to raise taxes, the Republicans said. Now—when the Republicans want to raise income taxes on poor people—it is clear that Republicans are more interested in ramming through their radical program than they are in keeping faith with low-income, working Americans. Does the Republican's three-fifths voting rule apply only to income tax increases for the wealthy?

CONCLUSION

I hope that at some point we can work in a bipartisan fashion to solve our Federal fiscal problems. But the bill reported by the Committee reflects sharply different agendas between those who want to bring Americans together and those who are asking the poor to pay for tax cuts for the wealthy.

I dissent.

CARRIE P. MEEK.